

Introduced May 2, 2011  
Public Hearing May 16, 2011  
Council Action June 6, 2011  
Executive Action June 8, 2011  
Effective Date June 8, 2011

## County Council Of Howard County, Maryland

2011 Legislative Session

Legislative Day No. 5

Bill No. 17 -2011

Introduced by: The Chairperson at the request of the County Executive

AN ACT pursuant to Section 612 of the Howard County Charter, approving a multi-year Power Purchase Agreement between Howard County, Maryland and Energy Answers Baltimore Holding, L.L.C., Energy Answers Baltimore, L.L.C., and Energy Answers International, Inc. for the purchase of electric power; and authorizing the County Executive to take certain actions in connection with the Agreement.

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Introduced and read first time May 2, 2011. Ordered posted and hearing scheduled.

By order Stephen M LeGendre  
Stephen LeGendre, Administrator

Having been posted and notice of time & place of hearing & title of Bill having been published according to Charter, the Bill was read for a second time at a public hearing on May 16, 2011.

By order Stephen M LeGendre  
Stephen LeGendre, Administrator

This Bill was read the third time on June 6, 2011 and Passed ☒ Passed with amendments \_\_\_\_\_, Failed \_\_\_\_\_.

By order Stephen M LeGendre  
Stephen LeGendre, Administrator

Scaled with the County Seal and presented to the County Executive for approval this 7<sup>th</sup> day of June, 2011 at 3 a.m./p.m.

By order Stephen M LeGendre  
Stephen LeGendre, Administrator

Approved/Vetoed by the County Executive June 8, 2011

Ken Utman  
Ken Utman, County Executive

NOTE: [[text in brackets]] indicates deletions from existing law; TEXT IN SMALL CAPITALS indicates additions to existing law; Strike-out indicates material deleted by amendment; Underlining indicates material added by amendment

1           **WHEREAS**, Howard County, Maryland (the "County") requires an additional contract for  
2 the long term purchase of electric power; and

3  
4           **WHEREAS**, the County is part of a consortium of governmental and non-profit entities that  
5 make up the Baltimore Regional Cooperative Purchasing Committee ("BRCPC"); and

6  
7           **WHEREAS**, Baltimore County, Maryland, as lead purchasing agent on behalf of BRCPC,  
8 issued Request for Proposal, Term Contract for Electric Power Purchase, Solicitation No. P-017 (the  
9 "RFP") for the purchase of electric power on behalf of BRCPC and its members; and

10  
11           **WHEREAS**, Energy Answers Baltimore Holding, L.L.C., a wholly owned subsidiary of  
12 Energy Answers International, Inc.; Energy Answers Baltimore, L.L.C.; and Energy Answers  
13 International, Inc. (collectively, the "Contractor"), is engaged in the business of developing and  
14 constructing renewable energy facilities and providing electric power; and

15  
16           **WHEREAS**, the Contractor submitted a proposal and was selected by the BRCPC to provide  
17 electric power pursuant to the RFP; and

18  
19           **WHEREAS**, the Contractor proposes to build a renewable energy power plant (the "facility")  
20 in Baltimore, Maryland to provide the electricity under this Agreement; and

21  
22           **WHEREAS**, the County, as a participating entity of BRCPC, wishes to enter into a Power  
23 Purchase Agreement, in substantially the form attached as Exhibit A, to purchase electricity from the  
24 Contractor; and

25  
26           **WHEREAS**, the Power Purchase Agreement is for a term of 10 years after the date the  
27 Contractor declares the facility ready for the commencement of commercial operations and may be  
28 renewed for two 5-year renewal terms; and

29  
30           **WHEREAS**, the terms of the Power Purchase Agreement requires the payment by the  
31 County of funds from an appropriation in a later fiscal year and therefore requires County Council

1 approval as a multi-year agreement pursuant to Section 612 of the Howard County Charter.

2  
3 **NOW, THEREFORE,**  
4

5 *Section 1. Be It Enacted by the County Council of Howard County, Maryland that, in accordance*  
6 *with Section 612 of the Howard County Charter, it approves the Power Purchase Agreement, in*  
7 *substantially the form attached as Exhibit A, between Howard County and Energy Answers*  
8 *Baltimore Holding, L.L.C., Energy Answers Baltimore, L.L.C., and Energy Answers International,*  
9 *Inc. for a term of 10-years and two 5-year renewal terms.*  
10

11 *Section 2. And Be It Further Enacted by the County Council of Howard County, Maryland that the*  
12 *County Executive is hereby authorized to execute the Power Purchase Agreement for such term in*  
13 *the name of and on behalf of the County.*  
14

15 *Section 3. And Be It Further Enacted by the County Council of Howard County, Maryland that the*  
16 *County Executive, prior to execution and delivery of the Power Purchase Agreement, may make such*  
17 *changes or modifications to the Power Purchase Agreement as he deems appropriate in order to*  
18 *accomplish the purpose of the transactions authorized by this Act, provided that such changes or*  
19 *modifications shall be within the scope of the transactions authorized by this Act; and the execution*  
20 *of the Power Purchase Agreement by the County Executive shall be conclusive evidence of the*  
21 *approval by the County Executive of all changes or modifications to the Power Purchase Agreement,*  
22 *and the Power Purchase Agreement shall thereupon become binding upon the County in accordance*  
23 *with its terms.*  
24

25 *Section 4. And Be It Further Enacted by the County Council of Howard County, Maryland that this*  
26 *Act shall be effective immediately upon its enactment.*

**ORIGINAL****POWER PURCHASE AGREEMENT**

**THIS POWER PURCHASE AGREEMENT** made this \_\_\_\_ day of \_\_\_\_\_, 2011, (the "Agreement") is by and between Howard County, Maryland, a body corporate and politic, (hereinafter "Entity"), and Energy Answers Baltimore Holding, LLC, ("EABH") a wholly owned subsidiary of Energy Answers International, Inc., Energy Answers Baltimore, LLC ("EAB") and Energy Answers International, Inc., 79 North Pearl Street, 4<sup>th</sup> floor, Albany, NY 12207 (jointly, collectively and severally known hereinafter as the "Contractor").

**WHEREAS**, the Entity is involved with numerous other entities in the Baltimore Metropolitan Council, Inc. ("BMC") with the central Maryland region of BMC having a purchasing consortium in the form of a cooperative purchasing committee known as the Baltimore Regional Cooperative Purchasing Committee ("BRCPC");

**WHEREAS**, the objective of BRCPC is for one lead entity, in this instance Baltimore County, Maryland, to issue a solicitation for a particular procurement matter, the specifications of which represent the needs of BRCPC and this cooperative and collective solicitation process seeks to lower administrative costs of the participating entities by avoiding duplication of effort, obtain better prices through economies of scale, and exchange information and expertise;

**WHEREAS**, the Contractor proposes to develop an approximately 140 MW (nominal) resource recovery renewable energy power plant in Baltimore, Maryland and associated off-site processed refuse fuel production facilities (the "Facility");

**WHEREAS**, the BRCPC seeks to procure long term blocks of electric power and, accordingly, the Entity, as lead entity for BRCPC in this cooperative purchase and procurement solicitation, created and released a Request for Proposal Term Contract for Electric Power Purchase, Solicitation No. P-017, as amended (collectively, the "RFP"), incorporated herein and attached hereto as Attachment E to this Agreement, on behalf of BRCPC and the specifications of said RFP represented the needs of the cooperative purchasing entities of BRCPC ;

**WHEREAS**, the Contractor responded to the RFP and BRCPC, including but not limited to the Entity, relied upon the Contractor's Response to the RFP (as defined hereinafter) and accordingly selected the Contractor as providing the best value while being a responsive and responsible bidder to the RFP; and

**WHEREAS**, twenty-one (21) other members of BRCPC elected to participate in this cooperative purchase RFP and each such member may elect to contract with the Contractor as a result of the RFP and the Contractor's Response to RFP (as defined hereinafter) thereto, however, any such member that enters into a contract with the Contractor (each such member, and its permitted assigns, a "Participating Entity" and, collectively, the "Participating Entities"; however, upon termination of such contract, such member shall cease to be a Participating Entity) shall have a separate and distinct contract with the Contractor and the Entity shall not be liable or obligated in any manner, nature or extent to the Contractor for any other Participating Entity or in connection with any other Participating Entity's contract agreement with Contractor;



WHEREAS, pursuant to the terms and conditions of this Agreement, Contractor hereby evidences its desire to covenant and agreement to perform all services and deliver all goods, in conformity with the Contractor's October 8, 2009 response to the RFP, as supplemented and amended by the Contractor's responses dated December 11, 2009, March 31, 2010, April 29, 2010, May 20, 2010, June 15, 2010, and June 18, 2010 (collectively, the "Contractor's Response to RFP", attached hereto and incorporated herein as Attachment F to this Agreement, and as summarized in Attachment A to this Agreement entitled, "Services to be Performed/Goods To Be Provided", attached hereto and incorporated herein; and

WHEREAS, simultaneously with the execution of this Agreement, the Contractor will assign a portion of its rights and obligations under this Agreement to Energy Answers Baltimore, LLC, a subsidiary owned subsidiary of the Contractor, pursuant to an assignment and assumption agreement in accordance with this Agreement, in particular Section 12 and 13 of this Agreement, the Contractor's Response to RFP and all applicable laws, statutes and regulations, including, but not limited to, those relating to procurement and purchasing for each Participating Entity.

NOW THEREFORE, in consideration of the mutual promises and covenants set forth herein, the parties hereto agree as follows:

1. Contractor's Duties.

1.1 The Contractor, in consideration of the payments hereinafter specified and agreed to be made by the Entity, hereby covenants and agrees to perform all services and provide all goods, in conformity with Attachment A entitled, "Services to be Performed/Goods to be Provided", the RFP, Attachment F entitled, "Contractor's Response to the RFP", and this Agreement.

1.2 The Contractor shall be an independent Contractor and not an employee of the Entity or any Participating Entity, and shall be responsible for the reporting and remittance of all state and federal taxes of any kind or nature. The Contractor shall provide the goods, as applicable, with due care and in a manner satisfactory to the Entity, and in accordance with this Agreement and all applicable professional standards, laws, regulations, executive orders, and the RFP.

1.3 Notwithstanding any other terms or provisions of this Agreement, in the event the Entity is temporarily or permanently prevented, restricted or delayed in the performance of any or all of the duties and obligations imposed upon or assumed by it hereunder by act of the General Assembly of Maryland or the Entity's legislative authority, by a court of competent jurisdiction or by administrative delay not due to the fault of the Entity (and its officials, employees or agents), the Entity may terminate this Agreement and thereupon the Entity shall not be liable directly or indirectly for any claims, losses, costs, or expenses caused to or suffered by the Contractor or any other person in connection with this Agreement or as a result of such prevention, restriction or delay, subject to the conditions to termination for convenience set forth in Section 5.1 of this Agreement.

2. Compensation.

2.1 Commencing on the first deliveries of Electric Power and the provision of Capacity (each as defined in Attachment A to this Agreement) by the Contractor from the Facility and thereafter

through the remainder of the Initial Term, as defined in Section 3.1 of this Agreement (and during any Renewal Term, as defined in Section 3.2 of this Agreement, as applicable), the Entity shall accept and purchase the portion of Capacity from the Facility and the portion of Electric Power that is delivered by the Contractor to the delivery point described in Attachment A to this Agreement in accordance with the quantity and unit prices set forth in Attachment A to this Agreement.

2.2 The Contractor shall submit invoices to Entity's then current Maryland-licensed electric supply service provider (the "ESSP"), monthly for the portion of Capacity and Electric Power provided to the Entity during the prior month, in accordance with Attachment A. The ESSP shall promptly submit each such invoice to the Entity. The ESSP has established a sub-account with the Pennsylvania, New Jersey, Maryland Regional Transmission Organization ("PJM") for the Entity's electric account. The Contractor's invoices shall reflect the:

- Contractor's name
- Address
- Federal tax identification number
- Order number and line number(s) that correspond with resulting orders
- Services performed and goods provided during the preceding billing period
- PJM Sub-account information as provided by the ESSP

Original invoices submitted in accordance with the above requirements to the ESSP and in the proper form shall be paid by the ESSP on behalf of the Entity within thirty (30) days of receipt thereof by the ESSP. The Entity reserves the right to review and approve such invoices, to request such detail and additional information as the Entity may reasonably request and to withhold amounts that are being disputed in good faith. The Entity shall notify the Contractor in writing of any change after the date hereof to the identity of, or the administrative or contact details for, the ESSP promptly and in any event within three (3) business days of such change.

2.3 Subject to the terms and conditions of the Agreement including, but not limited to Articles 7 and 8 of this Agreement, in no event shall the compensation paid to the Contractor exceed the sum of the Entity's approved appropriation for this Agreement in any contract year or term hereof. If any portion of any term of this Agreement extends beyond the Entity's then current fiscal year, this Agreement is subject to availability and appropriation of funds for that portion of the term that extends beyond the Entity's then current fiscal year.

2.4 Except as may be mutually agreed upon by legally authorized representatives of the parties hereto in writing, the Contractor shall be entitled to no fees, bonuses, contingent payments, or any other amount in connection with the services rendered or to be rendered or goods provided or to be provided hereunder other than the compensation and payments expressly provided for in this Agreement. The parties hereto further agree that except as set forth herein, the Entity shall have no obligation to reimburse, pay directly, or otherwise satisfy, any losses, costs or expenses of the Contractor in connection with the performance of its obligations under this Agreement, including, but not limited to, the loss, cost and/or expense of any insurance, license fees, hedging security, or hedging-related items.

2.5 The Entity shall purchase electric power under a separate contract agreement with the ESSP during the term of this Agreement, including all exercised renewals, as this is essential to the calculation of monthly invoices under this Agreement.

3. Term.

3.1 This Agreement shall be effective when executed by the Entity and the Contractor and shall continue through ten (10) years after the date on which the Contractor declares the Facility ready for commencement of commercial operations by providing written notice thereof to the Entity at least sixty (60) days prior to the intended date of commencement of commercial operations (hereinafter defined as the "Initial Term").

3.2 By mutual written agreement between the Contractor and the Entity, the parties may renew this Agreement for ten (10) years, in five-year increments, (each a "Renewal Term") on the same terms and conditions set forth herein. The two (2) five-year renewal options can be exercised no later than one-year prior to the start of the respective Renewal Term. Unless set forth in a written amendment, the compensation and manner of payment set forth in Article 2 and Attachment A with respect to such Renewal Term shall remain unchanged.

4. Representations and Warranties.

4.1 Each party hereto, as applicable, hereby represents the following:

(a) It is duly formed and validly existing under the laws of the Jurisdiction of organization and is in good standing in the State of Maryland.

(b) It has the power and authority to consummate the obligations and responsibilities contemplated hereby, and has taken all necessary action to authorize the execution of this Agreement and the delivery and performance required under this Agreement.

(c) It and the person executing this Agreement for such party warrants that he is duly and legally authorized by the respective party to bind the party to the terms and conditions of this Agreement and to execute this Agreement on such party's behalf.

4.2 The Contractor represents and warrants that the services and goods to be provided by the Contractor under this Agreement shall be performed and provided competently and with due care, and in accordance with all applicable laws, codes, ordinances, regulations, executive orders and licensing requirements, each in all material respects. The parties understand and agree that this Agreement may be for the provision of a combination of goods and services. In such case, the parties hereby agree that the warranties of merchantability and fitness for a particular purpose and use shall apply to the portion of this Agreement that is pertaining to or for goods. The parties understand and agree that the Entity shall rely upon all express warranties contained in this Agreement including, but not limited to, Attachment A. All goods to be delivered shall comply with the implied warranties of merchantability, fitness for particular purpose and use and warranties of title and against infringement, and all express warranties in this Agreement including, but not limited to representations and warranties of the Contractor contained in this

Agreement. The Contractor shall rely upon all express representations and warranties of the Entity contained in this Agreement.

4.3 The Contractor represents and warrants that it has obtained and shall continue to maintain, at its own cost, such licenses and certifications as are necessary to perform the services and provide the goods under this Agreement, and shall present such licenses and certifications to the Entity upon its request for the same.

4.4 If requested by the Entity, the Contractor shall deliver to the Entity written statements, schedules or reports in such form, containing such information and accompanied by such documents as may be reasonably requested by the Entity concerning the financial condition of the Contractor. Such documentation shall fairly and accurately present the financial condition of the Contractor as of their date and the results of its operations for the period then ended.

4.5 All representations and warranties made in the Procurement Affidavit and the Contract Affidavit (Attachment B, attached hereto and incorporated herein) remain true and correct in all material respects.

**5. Termination For Convenience or Non-Appropriation of Funds.**

**5.1 Termination for Convenience.**

5.1.1 The Entity may terminate this Agreement, in whole or in part, without cause, subject to the applicable conditions of termination set forth in Section 5.1.2 and Section 5.1.3 hereinafter, by providing written notice thereof to the Contractor at least thirty (30) days prior to the intended date of termination at the address set forth below, or at such other address as may be later designated by the Contractor in writing. The Contractor acknowledges that the absence of a reciprocal right of termination for convenience does not render this Agreement illusory or unenforceable.

5.1.2 If the Entity's termination for convenience of this Agreement is due to Contractor's failure to timely achieve a timeframe milestone described in Attachment A to this Agreement, the Contractor shall be entitled to no payment of any costs, expenses, or losses of any kind, nature or amount in connection with the termination for convenience of this Agreement.

5.1.3 Except as stated in Section 5.1.2 of this Agreement, upon the Entity's termination for convenience of this Agreement (including any termination pursuant to Section 1.3 or 5.2 of this Agreement) the remaining Participating Entities shall assume the Entity's obligation to accept and purchase the Capacity and Electric Power on the same terms and conditions set forth in this Agreement, with such assumption fully releasing the Entity from any and all obligations, duties and liabilities under this Agreement, upon and subject to the Entity's remittance of payment for any invoices submitted to the Entity or the ESSP that are due and owing to Contractor (to the extent not subject to a continuing good faith dispute), in accordance with Article 2 of this Agreement, through the date of such assumption.

**5.2 Termination for Non-Appropriation of Funds.**

The failure of the Entity to appropriate sufficient funds in any fiscal year or term of this Agreement or to provide funds for this Agreement shall entitle the Entity to terminate this Agreement subject to the conditions of termination for convenience as set forth in Section 5.1 of this Agreement.

6. **Insurance.**

The Contractor shall be required to procure and maintain the insurance required by the Entity pursuant to the attached insurance requirements in **Attachment C** attached hereto and incorporated herein, in the form and in amounts set forth in **Attachment C** attached hereto or otherwise acceptable to the Entity throughout the term of this Agreement. The Contractor shall provide certificates of insurance, binders or declarations from the insurance company evidencing the required insurance coverages to the Entity while this Agreement is in force in a form satisfactory to the Entity. Such documentation may, in the reasonable discretion of the Entity, be in the form of binders, or declarations, or policies from the insurance company, as requested by the Entity. In the event of a conflict between the provisions of the attached insurance requirements and this Agreement, the provisions of this Agreement shall prevail.

7. **Default.** The term "Default" as used in this Agreement shall mean the occurrence or happening, from time to time, of any one or more of the following:

7.1 **Failure to Make Payment.** If any amount due and payable by the Entity or by the ESSP pursuant to this Agreement is not paid (including, but not limited to, by reason of Section 2.3) within twenty (20) calendar days of the date such amount becomes due and payable in accordance with Article 2 of this Agreement.

7.2 **Representations and Warranties.** If any representation or warranty, express or implied contained in this Agreement shall prove at any time to be incorrect or misleading in any material respect either on the date when made or on the date when reaffirmed or at any time throughout the term of this Agreement.

7.3 **Compliance with Covenants and Conditions.** If a party hereto fails to materially comply with the terms of any covenant or condition in this Agreement.

7.4 **Performance of Contractual Obligations.** If the services performed and the goods provided hereunder are not materially performed and provided in accordance with the provisions of this Agreement.

7.5 **Bankruptcy.** If any party hereto generally does not pay its debts as they become due, or if a petition for relief or other voluntary bankruptcy filing is filed by such party in a bankruptcy court, or if such party applies for, consents to, or acquiesces in the appointment of a trustee, custodian, or receiver for such party or substantially all of its assets and property, or makes a general assignment for the benefit of creditors; or in the absence of such application, consent, or acquiescence, a trustee, custodian, or receiver is appointed for the party or for a substantial part of the assets and property of such party and is not dismissed within thirty (30) days; or any bankruptcy, reorganization, debt arrangement, or other proceeding or case under any bankruptcy or insolvency or any dissolution or liquidation proceeding is instituted against any party and is consented to or acquiesced in by such party or remains for sixty (60) days un-dismissed.

7.6 Cure Period for Contractor. In the event of a Default by the Contractor, Entity shall provide a written notice of the Default to the Contractor in accordance with Article 24 of this Agreement. The Entity shall allow the Contractor thirty (30) calendar days from the date of the Contractor's receipt of notice of said Default to either 1) correct and cure its performance under this Agreement, or 2) implement a plan of action reasonably acceptable to the Entity whereby the Contractor corrects its performance within a mutually agreed upon period of time. If the Contractor fails to timely achieve the correction and cure or implementation of a plan of action reasonably acceptable to the Entity as described in this Section 7.6, the Entity may terminate the Agreement and exercise any and all rights and remedies available under this Agreement, at law or in equity.

7.7 Cure Period for Entity. In the event of a Default by the Entity, Contractor shall provide a written notice of the Default to the Entity in accordance with Article 24 of this Agreement. The Contractor shall allow the Entity thirty (30) calendar days (ten (10) calendar days in the case of a Default under Section 7.1 of this Agreement) from the date of the Entity's receipt of notice of said Default to either 1) correct and cure its performance under this Agreement, or 2) implement a plan of action reasonably acceptable to the Contractor whereby the Entity corrects its performance within a mutually agreed upon period of time. If the Entity fails to timely achieve the correction and cure or implementation of a plan of action reasonably acceptable to the Contractor described in this Section 7.7, the Contractor may terminate the Agreement and exercise any and all rights and remedies available under this Agreement, at law or in equity.

8. **Remedies for Default.**

8.1 Except as otherwise provided in Sections 7.6 and 7.7 of this Agreement, the Entity or the Contractor, as applicable, shall have the right upon the happening of any Default by the other and on written notice of the Default to the defaulting party:

- a. in addition to other available rights and remedies, to terminate this Agreement;
- b. to suspend the Contractor's authority to receive any undisbursed funds (other than amounts due and owing in respect of Electric Power and Capacity provided by Contractor and to the extent not subject to a continuing good faith dispute); and/or
- c. to proceed, at any time while such Default is continuing, to protect and enforce all rights and remedies available, by suit or any other appropriate proceedings, whether for specific performance of any covenant, term or condition set forth in this Agreement, or for damages or other relief, or proceed to take any action authorized or permitted under applicable law or regulations; and/or
- d. exercise the remedies provided in this Article 8 of this Agreement.

8.2 No party hereto shall be liable to the other party for consequential, incidental, punitive, exemplary or indirect damages in connection with this Agreement.

8.3 a. In the event that the Entity terminates this Agreement due to a Default of the Contractor, the Entity may elect to pay the Contractor for services provided and/or goods delivered up to the date of termination, less the amount of damages caused by the Contractor's Default, all as determined by

the Entity in its sole and reasonable discretion. However, should the damages exceed the undisbursed sums available for compensation, the Entity shall not be obligated to make any further disbursements hereunder, rather, the Contractor shall promptly remit payment to the Entity in the amount of any and all actual damages incurred by the Entity as a result of such Contractor's Default.

b. In the event that the Contractor terminates this Agreement due to a Default of the Entity, the remaining Participating Entities shall assume the Entity's obligation to accept and purchase the Capacity and Electric Power on the same terms and conditions set forth in this Agreement, with such assumption fully releasing the Entity from any and all obligations, duties and liabilities under this Agreement, upon and subject to the Entity's remittance of payment for invoices submitted to the Entity or the ESSP that are due and owing to the Contractor (to the extent not subject to a continuing good faith dispute), in accordance with Article 2 of this Agreement, though the date of such assumption.

9. **Remedies Cumulative and Concurrent.**

No remedy herein conferred upon or reserved to a party hereto is intended to be exclusive of any other remedies provided for in this Agreement, and each and every such remedy shall be cumulative, and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. Every right, power and remedy given to a party hereto shall be concurrent and may be pursued separately, successively or together against the other party hereto, and every right, power and remedy given to a party hereto may be exercised from time to time as often as may be deemed expedient by such party.

10. **Confidential Information.**

Subject to Maryland Public Information Act (Title 10, Subtitle 6, Part III of the State Government Article of the Annotated Code of Maryland)(the "PIA"), no party hereto (a "Receiving Party") shall disclose any confidential information of the other party hereto (the "Disclosing Party") obtained pursuant to, or in connection with, the execution or performance of this Agreement to any Person other than an officer, director, employee, agent, representative or consultant of the Receiving Party without the express prior written consent of the Disclosing Party. A party hereto seeking to classify any material as confidential information must specifically designate such material as confidential prior to disclosing it to the Receiving Party. A Disclosing Party may not seek confidential treatment of any material unless such material was designated as confidential at the time of disclosure to the Receiving Party. Notwithstanding the foregoing, a party hereto may: (a) produce confidential information in response to a subpoena, discovery request, the PIA, or other compulsory process issued by a governmental authority upon reasonable prior notice to the Disclosing Party; provided, however, that prior to such disclosure, the Receiving Party must use reasonable efforts in cooperation with the Disclosing Party to seek confidential treatment of such confidential information; (b) disclose whatever information FERC requires it to disclose in connection with the filing of quarterly or annual reports and may make such disclosure without notification to the Disclosing Party; and/or (c) disclose confidential information to its affiliates and their officers, directors, employees, agents, representatives and consultants and, in the case of the Contractor, its current and potential lenders,

investors and purchasers; provided, however, that such affiliates, officers, directors, employees, agents, representatives, consultants, lenders, investors and purchasers must be bound by confidentiality obligations as set forth in, or similar to, this Article 10.

**11. Conflict of Interest.**

The Contractor represents and warrants that there is no actual or potential conflict of interest between its performance under this Agreement and its engagement or involvement in any other personal or professional activities. In the event such conflict or potential conflict arises during the term of this Agreement, or any renewal hereof, the Contractor shall immediately advise the Entity in writing thereof.

**12. Assignment.**

12.1 Except as otherwise stated in this Agreement, no party hereto shall assign, sublet or transfer its interest or obligations under this Agreement to any third party, without the prior written consent of the other party hereto, provided however, that the Contractor may collaterally assign all of its rights, title and interest in this Agreement to any lender to the Contractor or the Facility without the consent of the Entity. However, the Contractor shall provide the Entity with prompt written notice of any and all such collateral assignment of Contractor's rights, title and interest in this Agreement not later than ten (10) calendar days thereafter. In the event such lender, its successors and/or assigns forecloses on or otherwise succeeds to or assigns the Contractor's interest and obligations under the Agreement with prior written notice to the Entity of a minimum of 45 days, the lender or its designee or assignee shall assume all of the Contractor's liabilities, duties, obligations and rights under the Agreement, and all amendments thereto. Provided however that in such event, the Entity, or any Participating Entity thereto, shall have the right to terminate for convenience pursuant to Article 5 hereof, in whole or in part, upon thirty (30) days written notice to the Contractor. The Contractor further agrees to provide a minimum of ninety (90) days' written notice to the Entity prior to entering into any merger or consolidation where the surviving entity (if not the Contractor) will be unwilling or unable to accept the Contractor's obligations hereunder, to enable the Entity to procure the goods and/or services elsewhere. In the event the cost of procuring such alternate goods and/or services increases the cost to the Entity, and/or delays delivery time of any product, in addition to any other remedies available to the Entity, the Contractor shall pay to the Entity, as damages, any and all additional costs and/or damages incurred.

12.2 Nothing in this Agreement shall be construed to create any personal or individual liability upon any employee, officer or official of any party hereto, nor shall this Agreement be construed to create any rights or obligations for any person or entity other than the parties hereto.

**13. Delegation of Duties.**

Except as expressly stated in this Article 13, the Contractor shall not delegate the Contractor's duties under this Agreement without the prior written consent of the Entity. The parties agree that this Article 13 shall not apply to any work performed by any design, engineering, procurement and/or construction contractor or subcontractor at the Facility. The parties acknowledge that Energy Answers Baltimore Holding, LLC, ("EABH"), a controlled and managed subsidiary of Energy Answers International,



Inc., , shall remain the managing member with binding day to day operational control and authority over Energy Answers Baltimore, LLC ("EAB" ) unless it is removed pursuant to the organizational documents of EAB for failure to perform in accordance with the Agreement, good industry practices and in compliance with law or as otherwise set forth therein. No person may succeed EABH as managing member of EAB unless it meets the requirements of EABH as set forth in this Agreement, and all amendments thereto, and with prior written notice of forty five (45) days to the Entity of such assignment or succession. In such events, the Entity, or any Participating Entity thereto, shall have the right to terminate for convenience pursuant to Article 5, in whole or part, upon thirty (30) days written notice to the Contractor. EABH and any successor managing member of EABH shall be responsible under such organizational documents for managing EAB in accordance with the Agreement and to use their best efforts to enable the Contractor to comply with its obligations under the Agreement. The Contractor may subcontract to a qualified third party certain operation, repair and maintenance of the Facility, but shall remain completely liable in equity and law. The Entity shall be entitled to propose qualifications for any and all contractors and/or subcontractors performing any and all obligations of the Contractor pursuant to this Agreement and the Contractor shall give due consideration to such proposal(s). Contractor shall not assign or delegate any duties, obligations, rights, title or interest under this Agreement in violation of any and all applicable Participating Entities procurement laws and regulations, in any material respect as determined by the impacted Participating Entity.

**14. Indemnification.**

14.1 The Contractor shall defend, indemnify and hold harmless the Entity, its employees, agents and officials from any and all liabilities, claims, suits, or demands including but not limited to reasonable attorneys' fees which may be made against the Entity, its employees, agents or officials arising from any claims made by a third party (not including the Entity) resulting from the negligence or willful misconduct of the Contractor or anyone under agreement with the Contractor to perform duties under this Agreement. The Contractor shall not be responsible for acts of gross negligence or willful misconduct committed by the Entity or its employees, agents or officials.

14.2 The Contractor shall also defend, indemnify and hold harmless the Entity, its employees, agents and officials from any and all liabilities, claims, suits, or demands including but not limited to attorneys' fees which may be made against the Entity, its employees, agents or officials by any third party arising from the alleged violation by the Contractor or its agents, employees, officers, directors, representatives, consultants or assigns of any third party's trade secrets, proprietary information, trademark, copyright, patent rights, or intellectual property rights in connection with this Agreement.

14.3 Unless notified by the Entity in writing to the contrary, the Contractor shall provide defense for the Entity, its employees, agents and officials in accordance with this Article 14 and in doing so Contractor shall allow the Entity to participate in said defense of the Entity, its employees, agents and officials, to the extent and as may be reasonably required by the Entity and the Contractor shall cooperate with the Entity in all aspects in connection therewith. However, the Contractor may elect not to assume such

defense to the extent that the Contractor is a defendant in the same or related proceeding and, in the Contractor's reasonable determination, a conflict of interest exists between the Contractor and the Entity. If the Contractor provides prompt written notice to the Entity within twenty (20) calendar days of Contractor's actual knowledge and receipt of said litigation or administrative matter of Contractor's election not to defend the Entity as described herein, the Entity shall retain separate counsel, subject to the Contractor's consent (such consent not to be unreasonably withheld), and the Contractor shall pay for the reasonable expenses of such counsel; provided, that the Entity shall not enter into any binding settlement agreement that would result in any material payment obligation by the Contractor or that would not fully discharge the Contractor from any settled claim in each case without prior written notice to the Contractor.

**15. Integration and Modification.**

This Agreement (including the Attachments described herein and attached hereto), sets forth the entire agreement between the Contractor and the Entity relative to the subject matter hereof. No representation, promise or condition, whether oral or written, not incorporated herein shall be binding upon the Contractor and the Entity. No waiver, modification or amendment of the terms of this Agreement shall be effective unless made in writing and signed by an authorized representative(s) of the Contractor and the Entity.

**16. Fee Prohibition.**

The Contractor warrants and represents that it has not employed or engaged any unrelated third party or broker to solicit or secure this Agreement, and that it has not paid, or agreed to pay any person or entity a broker's or finder's fee or any other consideration contingent on the making of this Agreement. If any suit, claim, or demand shall arise concerning such a fee, the Contractor agrees to indemnify and hold harmless the Entity, its employees, agents, and officials from all such claims, suits or demands.

**17. No Partnership.**

Nothing contained in this Agreement shall be construed in any manner to create any relationship between or among the Contractor and the Entity or any Participating Entity other than expressly specified herein and the Contractor, the Entity and the Participating Entities shall not be considered partners or co-venturers for any purpose on account of this Agreement.

**18. Governing Law.**

This Agreement shall be governed and construed in accordance with the laws of the State of Maryland.

**19. Recitals and Conflicting Terms.**

19.1 The Recitals are hereby incorporated into this Agreement.

19.2 In the event of a conflict between the RFP and this Agreement, the provisions of this Agreement (without the conflicting terms in the RFP) shall prevail. Notwithstanding anything in this Agreement to the contrary, the parties agree that the following provisions of the RFP are superseded by this Agreement and of no further force and effect: sections 5.1, 7.3, 9, 10, 12, 13, 14, 15 of the General Terms and Conditions For All Solicitations; Part II of Baltimore County, Maryland Insurance Provisions; and

sections 2.4, 2.5 and 2.6 (first sentence only) of the General Conditions for the Baltimore Regional Cooperative Purchasing Committee Request for Proposal No. P-017 Term Contract for Electric Power Purchase.

19.3 This Agreement, including all Attachments, represents the full and final understanding of the parties, and no other understanding or representations, oral or written, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto unless in writing and signed by legally authorized representatives of the parties. If any term of this Agreement conflicts with any term of Attachment A, the RFP, or Contractor's Response to RFP, then the term of this Agreement shall control. If any term of Attachment A to this Agreement conflicts with any term of the RFP or Contractor's Response to RFP, then the term of Attachment A shall control. If the RFP conflicts with the Contractor's Response to RFP, and that conflict is not resolved by any other document, then the term of the RFP shall control.

20. Counterparts.

This Agreement may be executed in any number of counterparts by the Contractor, and the Entity hereto in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute but one and the same instrument.

21. Discrimination Prohibited.

21.1 In the execution of the obligations and responsibilities hereunder, including, but not limited to, hiring or employment made possible by or relating to this Agreement, the Contractor shall not:

a. Fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to the individual's compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, age, national origin, marital status, sexual orientation, genetic information, or disability unrelated in nature and extent so as to reasonably preclude the performance of the employment, or because of the individual's refusal to submit to a genetic test or make available the results of a genetic test;

b. Limit, segregate, or classify its employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect the individual's status as an employee, because of the individual's race, color, religion, sex, age, national origin, marital status, sexual orientation, genetic information, or disability unrelated in nature and extent so as to reasonably preclude the performance of the employment, or because of the individual's refusal to submit to a genetic test or make available the results of a genetic test; or

c. Request or require genetic tests or genetic information as a condition for hiring or determining benefits.

21.2 All solicitations or advertisements for employees shall state that the Contractor is an equal opportunity employer.

**22. Reports / Information / Inspections / and Audits.**

22.1 The Contractor shall make available to and permit inspection and photocopying by the Entity, its employees or agents, all records, information and documentation of the Contractor reasonably necessary for the Entity to perform a review of previously paid invoices in connection with this Agreement.

22.2 The Entity may retain an independent auditor to perform an audit of the Contractor's invoices and back up data.

22.3 The Contractor shall provide monthly reports of its activities and the status of its objectives to the person designated by the Entity to receive such reports. The Contractor shall maintain, in a neat and orderly manner, all documents and records relating to invoiced goods and services pursuant to this Agreement.

**23. MBE/WBE.**

The Contractor shall comply with the Baltimore County Executive Order dated June 4, 2009. The MBE/WBE participation requirement for this Agreement shall be determined by Baltimore County's Procurement Review Group and documented between the Entity and the Contractor on or before the completion date of the Facility.

**24. Notice.**

Any notice required to be delivered shall be deemed to have been received when the notice has been sent by certified mail, return receipt, overnight carrier with receipt, or hand delivered with signed receipt to the following address or individual or at such other address and/or such other individual a party may identify in writing to the other party:

**FOR THE CONTRACTOR: Patrick F. Mahoney, President, Energy Answers International, Inc., 79 North Pearl Street, 4<sup>th</sup> floor, Albany, NY 12207, 518-434-1227, with a copy to Project Manager, Energy Answers Baltimore, LLC, 1701 East Patapsco Avenue, Baltimore, MD 21226.**

**FOR THE ENTITY: Darla H. Herbold, CPPO, Chief of Purchasing, 6751 Columbia Gateway Drive, 5th Floor, Columbia, Maryland, 21046**

**25. Political Contribution Disclosure Affirmation.**

The Contractor affirms that it is aware of, and will comply with, the provisions of Sections 14-101 through 14-108 of the Election Law Article of the Annotated Code of Maryland, as amended which requires that every person who makes, during any 12-month period, one or more contracts, with one or more Maryland governmental entities involving cumulative consideration, of at least \$100,000.00, shall file with the State Board of Elections certain specified information including but not limited to the disclosure of attributable political contributions in excess of \$500 during defined reporting periods.

**26. No Waiver, Etc.**

No failure or delay by the Entity or the Contractor to insist upon the strict performance of any term, condition or covenant of this Agreement, or to exercise any right, power, or remedy consequent upon a breach thereof, shall constitute a waiver of any such term, condition, or covenant or of any such breach, or preclude such party from exercising any such right, power, or remedy at any later time or times.

**27. Severability.**

If any of the provisions in this Agreement are declared by a court or other lawful authority to be unenforceable or invalid for any reason the remaining provisions hereof shall not be affected thereby and shall remain enforceable to the full extent permitted by law. In such event, the parties hereto shall use their best efforts to modify this Agreement to give effect to the original intention of the parties.'

**28. No Liability or Obligation.**

EXCEPT AS EXPRESSLY STATED IN SECTION 5.1.3 AND SECTION 8.3 OF THIS AGREEMENT WITH REGARD TO THE PROSPECTIVE PURCHASE OF ELECTRIC POWER AND CAPACITY, THE ENTITY IS NOT OBLIGATED, LIABLE OR RESPONSIBLE FOR ANY PARTICIPATING ENTITY UNDER SUCH PARTICIPATING ENTITY'S INDIVIDUAL, SEPARATE AND DISTINCT CONTRACT AGREEMENT. EXCEPT AS EXPRESSLY STATED IN SECTION 5.1.3 AND SECTION 8.3 OF THIS AGREEMENT WITH REGARD TO THE PROSPECTIVE PURCHASE OF ELECTRIC POWER AND CAPACITY, ANY CONTRACT ACTION BY A PARTICIPATING ENTITY INCLUDING, BUT NOT LIMITED TO, TERMINATION FOR DEFAULT OR CONVENIENCE, SHALL NOT BIND OR CREATE ANY LEGAL OBLIGATION, DUTY OR RESPONSIBILITY OF ANY KIND, NATURE OR EXTENT TO BRCPC OR ANY OTHER PARTICIPATING ENTITY. THE ENTITY IS ONLY A PARTY TO THIS AGREEMENT WITH THE CONTRACTOR AND IS NOT A PARTY TO ANY OTHER CONTRACT AGREEMENT WITH THE CONTRACTOR.

**29. Survival.**

Those articles and sections of this Agreement which by their nature are intended to survive including, but not limited to, Section 2.5, Articles 5 (Termination For Convenience and Non-Appropriation of Funds), 8 (Remedies for Default), 10 (Confidential Information) and 14 (Indemnification) and 25 (Reports/Information/and Audits) shall survive the expiration or earlier termination of this Agreement.

**30. Power Purchase Agreement Option.** The parties understand and agree that the Entity is not purchasing the Option or any items noted in Attachment D, however, the Contractor seeks to provide and include the Option and the items noted in Attachment D in this Agreement. Should the Entity elect to purchase the Option or any items noted in Attachment D, this election by the Entity shall be documented by a written amendment to this Agreement in accordance with Article 15 of this Agreement.

30.1 The Contractor is also willing to provide an option for the purchase of capacity, electric power and associated REC's, as defined in Attachment D to this Agreement (the "Option")

substantially on the terms and conditions set forth in the term sheet attached hereto as Attachment D to this Agreement.

30.2 The Option in Section 30.1 of this Agreement shall terminate upon the earliest to occur of:

- (a) the expiration or earlier termination of this Agreement;
- (b) one or more Participating Entities or other persons purchasing the capacity, electric power and associated RECs offered in the Option as set forth in Attachment D; or
- (c) written notice from the Contractor to the Entity.

**31. Facility Lenders' Rights.**

Subject to the Entity's prior receipt and review thereof, the Entity agrees to provide consents to assignment and all other documents that are reasonably requested by Contractor or by the lenders supporting the financing and construction of the Facility and that are standard in the financing industry as long as such assignments and/or all other documents do not unreasonably jeopardize or prejudice the rights and remedies of the Entity, in the Entity's sole but reasonable discretion, under this Agreement.

**32. Termination of Contract With Participating Entity.**

Except as expressly stated in Section 5.1.3 and Section 8.3 of this Agreement, with regard to the prospective purchase of Electric Power and Capacity, a termination, whether for default or convenience, by the Contractor and/or a Participating Entity under any separate and distinct contract agreement for the applicable and respective Participating Entity's purchase of electric power and capacity resulting from the RFP, shall not affect the rights and obligations of Contractor or the Entity under this Agreement.

**33. Use of Agreement by Third Parties.**

33.1 The Maryland Department of General Services may elect to participate in BRCP's intergovernmental cooperative purchase and may elect to procure capacity, energy and/or associated RECs as described in this Agreement including, but not limited to, the Option described in Article 30 of this Agreement, with such procurement being at the same pricing and terms as stated herein. However, should the Maryland Department of General Services so elect to procure and thereafter enter into a contract agreement with the Contractor therefor, such contract agreement shall be separate and distinct from this Agreement and may include additional terms and conditions as may be required by the Maryland Department of General Services in its reasonable discretion. Neither the Entity nor any Participating Entity shall be obligated, liable or responsible in any amount, nature or respect for any such contract agreement by and between the Maryland Department of General Services and the Contractor.

Should the Maryland Department of General Services enter into such a contract agreement with the Contractor for its procurement of said capacity, energy and/or associated RECs as described in this Agreement including, but not limited to the Option described in Article 30 of this Agreement, then accordingly thereafter, in accordance with Article 41, Section 18-201 of the Annotated Code of Maryland, as amended, upon the approval by the Secretary of the Maryland Department of General Services, the following

33.1.3 A governmental agency in the state of Maryland with primary procurement authority;

33.1.4 A public or quasi-public agency that (i) receives money from the State of Maryland and (ii) is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code;

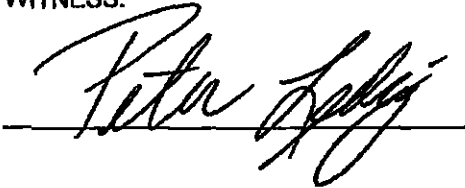
33.1.5 A private elementary or secondary school that (i)(A) either has been issued a certificate of approval from the state Board of Education or is accredited by the Association of Independent Schools, and (B) is exempt from taxation under Section 501 (c)(3) of the Internal Revenue Code, or (ii) a non-public institution or higher education under Section 17-106 of the Education Article of the Annotated Code of Maryland.

The entities listed in Sections 33.1.1 through 33.1.5 each shall be defined for purposes of this Agreement as a "Third Party Buyer".


33.2 The right of a Third-Party Buyer to purchase through the Maryland Department of General Services, pursuant to Article 41, Section 18-201 of the Annotated Code of Maryland, as amended, shall be in addition to, but not in substitution for, the purchasing power of the Third-Party Buyer pursuant to the Third-Party Buyer's charter, code, statutes and/or regulations, as applicable. The Entity and each Participating Entity shall not be obligated, liable or responsible in any amount, nature or respect for any such Third-Party Buyer's contract agreement with the Contractor and any and all such contract agreement(s) shall be separate and distinct from this Agreement in all manner and respects.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first written above.

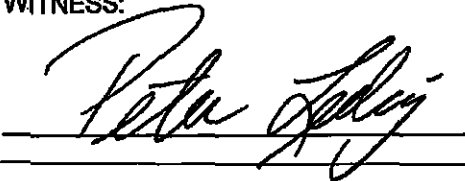
WITNESS:



**ENERGY ANSWERS INTERNATIONAL, INC.**  
Federal Identification No. 14-1718933

By:  (SEAL)  
Patrick F. Mahoney  
President

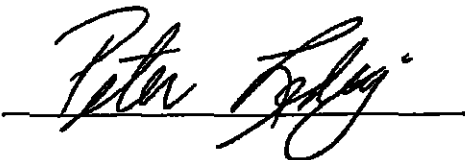
WITNESS:



**ENERGY ANSWERS BALTIMORE, LLC.**  
Federal Identification No. 30-0634160

By:  (SEAL)  
Patrick F. Mahoney  
President

WITNESS:



**ENERGY ANSWERS BALTIMORE HOLDING , LLC.**  
Federal Identification No. 30-0634156

By:  (SEAL)  
Patrick F. Mahoney  
President

[Entity's Signatures on the following page]

WITNESS:

**HOWARD COUNTY, MARYLAND** a body  
corporate and politic

\_\_\_\_\_  
Lonnie R. Robbins  
Chief Administrative Officer

By: \_\_\_\_\_  
Ken Ulman  
County Executive

APPROVED FOR LEGAL SUFFICIENCY  
this \_\_\_\_\_ day of \_\_\_\_\_, 2011:

\_\_\_\_\_  
Margaret Ann Nolan  
County Solicitor

APPROVED FOR SUFFICIENCY OF FUNDS:

DEPARTMENT APPROVED:

\_\_\_\_\_  
Sharon Greisz  
Director of Finance

\_\_\_\_\_  
James M. Irvin  
Director of Public Works



## ATTACHMENT A

### SERVICES TO BE PERFORMED/GOODS TO BE PROVIDED

**THE PARTIES ACKNOWLEDGE AND AGREE THAT THIS NOT A REQUIREMENTS CONTRACT, THE PARTIES FURTHER ACKNOWLEDGE THAT BRCPC, EACH PARTICIPATING ENTITY AND THE ENTITY ARE NOT FINANCING THE CAPITAL PROJECT OF THE CONTRACTOR, RATHER THE ENTITY AND EACH PARTICIPATING ENTITY ARE MERELY PURCHASING ELECTRIC POWER AND CAPACITY AS DESCRIBED IN THIS AGREEMENT.**

The Contractor shall use reasonable efforts to build an electric power generation facility in the BGE Zone. When the Facility is ready to commence commercial operations pursuant to Section 3.1 of this Agreement, the Contractor agrees to supply to the Entity the portion of 25 MWs of the installed capacity of the Facility (the "Capacity") and the amount of electric power that is produced by such number of MWs from the Facility or otherwise delivered by the Contractor to the delivery point (the "Electric Power"), except during Force Majeure Events or Non-Delivery Days or to the extent Contractor is prevented due to a Default of the Entity. The portion of Capacity and Electric Power to be provided by the Contractor to the Entity shall equal the ratio of the electric power consumed daily by the Entity, as reported by the ESSP, over the aggregate electric power consumed daily by the Entity and the Participating Entities, as reported by the ESSP. The Entity shall cause the ESSP to notify the Contractor of the aggregate daily load of the Entity on a daily basis.

The parties agree that, if at any time during the term of this Agreement, an event of termination for convenience, default, or non-appropriation occurs under a Participating Entity's separate contract agreement with the Contractor resulting from the RFP, such BRCPC member entity shall simultaneously cease to be Participating Entity for purposes of this Agreement. The parties agree that upon such termination, the Entity's portion of Capacity and Electric Power to be provided by the Contractor to the Entity shall be immediately recalculated and shall equal the ratio of the electric power consumed daily by the Entity, as reported by the ESSP, over the aggregate electric power consumed daily by the Entity and the Participating Entities minus that BRCPC member entity, as reported by the ESSP (should the BRCPC member entity continue to purchase electric power from the ESSP). The parties also agree that upon such termination, should such BRCPC member entity fail to continue to purchase electric power from the ESSP, the Entity and the Contractor shall promptly amend this Agreement to address the manner of invoice calculation as described in Article 2 and this Attachment A of the Agreement, all as mutually agreeable to the parties.

The Entity shall only purchase Electric Power and Capacity if and when the Contractor provides the Electric Power and Capacity. The parties acknowledge that the purpose of this Agreement is to buy power and capacity, not to fund the capitalization of the power generation facilities.

The Facility may be fueled by fossil fuels or any of the approved State of Maryland Tier I or Tier II green power sources including but not limited to wind, solar, landfill gas, hydroelectric, geothermal, biomass gases, and municipal solid waste.

Contractor's new generation facilities must be located in the Baltimore Gas and Electric/PEPCO zones. Contractor must have site control, a viable development plan to provide the Electric Power and Capacity described hereunder in accordance with the terms and conditions of this Agreement. The Contractor's timeframe milestones for development and construction of the new Contractor's generation facilities following closing of all construction financing are as follows:

- Securing permits for construction: 18 months
- Finding fuel supply necessary to support the generation facilities for the entire length of the contract: 30 months

- Establishment of funding for the new facilities: 12 months
- Construction phase (contracting process, ground breaking, construction, start-up of facilities): 36 months
- The entire timeframe shall not exceed 48 months.

The Contractor shall use reasonable efforts to fund, develop, construct, and operate the new generation facilities. The sales transaction for the Electric Power and Capacity supplied to the Entity must be conducted with and through the ESSP.

The Contractor must meet each Agreement timeframe milestone listed in this Attachment A, which timeframes shall be extended in writing by the parties hereto for Force Majeure Events and any delays to the extent caused by the Entity. Failure to meet any milestone (as extended above) is sufficient grounds for the Entity to terminate the Agreement in accordance with Article 5 of the Agreement.

### Prices

Pursuant to Section 2.2 of this Agreement, the Entity shall, on a monthly basis, cause the ESSP to remit payment for Electric Power and Capacity provided to the Entity by the Contractor under this Agreement. The Entity shall cause the ESSP to remit payment on behalf of the Entity at the prices below. The Entity's obligation to cause the ESSP to remit payment as described herein shall continue during and be unaffected by any Force Majeure Event or Non-Delivery Days.

The energy (Electric Power) price for calendar year 2013 is \$68.00 per MWh. The Capacity price for 2013 is \$140.00 per MW-Day. Both the energy and Capacity prices shall escalate 3% for each successive calendar year through the end of the Initial Term.

If this Agreement is extended according to the terms herein after the end of the Initial Term, the energy and Capacity prices shall be calculated as follows:

Energy Price for the first year of the first Renewal Term = (Energy Price for last year of Initial Term X 1.03) +/- 50% (Market Price – (Energy Price for last year of Initial Term X 1.03))

Market Price = simple average of the forward prices for the first year of the first Renewal Term from three major wholesale suppliers.

Any reduction in the Energy Price resulting from this calculation will be capped at \$2/MWh.

The Energy Price for each successive contract year within the first Renewal Term will be escalated by 3% per year over the prior year's Energy Price, starting on January 1 of each successive year.

Energy Prices for the second five year Renewal Term will be calculated using the same methodology.

Capacity Price for the first year of the first Renewal Term = (Capacity Price for last year of Initial Term X 1.03) +/- 50% (Market Price – (Capacity Price for last year of Initial Term X 1.03)).

Market Price = the Base Residual Auction Capacity Price.

Any reduction in the Capacity Price resulting from this calculation will be capped at 3%.

The Capacity Price for each successive contract year within the first Renewal Term will be escalated by 3% per year over the prior year's Capacity Price, starting on January 1 of each successive year.

Capacity Prices for the second five year Renewal Term will be calculated using the same methodology.

As it relates to the two (2) five-year Renewal Terms, the three (3) major wholesale suppliers and/or brokers, who shall be a PJM member or a member of a regional transmission organization and mutually acceptable to both parties hereto, will be mutually agreed upon by both parties no later than ten (10) business days after the respective Renewal Term option is exercised.

The energy (Electric Power) delivery point shall be the high voltage busbar of the Pumphrey substation or the PJM BGE Zone, at the sole discretion of the Contractor.

#### Non-Delivery Days

The Contractor may elect to designate up to thirty (30) days in a calendar year as days in which the Contractor will not be required to deliver Electric Power or provide Capacity to the Entity under this Agreement ("Non-Delivery Days"), provided that no such day may be designated to occur during the month of June, July, August or September. The Contractor shall make such designation of Non-Delivery Days in respect of a particular calendar year by delivery to the Entity of written notice of the day or days so designated, such notice to be delivered to the Entity no later than October 31 of the prior calendar year thereto.

#### Environmental Attributes

The Contractor shall at all times retain sole title to, and all rights and privileges in connection with, any and all RECs and other Environmental Attributes associated with the Facility and the Electric Power and Capacity that is produced by the Facility. "REC" shall mean "renewable energy credit" as defined in Public Utility Companies Article, Subtitle 7, Annotated Code of Maryland. "Environmental Attributes" means renewable energy credits (as defined in the Public Utility Companies Article, Subtitle 7, Annotated Code of Maryland) and any and all other federal, regional, state and other credits, certificates, transferable instruments, benefits, emission reductions, offsets and allowances that are attributable, now or in the future, to the Facility or the Electric Power produced by the Facility.

#### Force Majeure

The Contractor shall be excused from its obligation to deliver Electric Power and Capacity during any Force Majeure Event. "Force Majeure Event" means any cause or event beyond the reasonable control of the Contractor and not due to the Contractor's negligence, including, without limitation: storms, floods, violent winds, lightning, earthquakes, fire, explosions, failure of apparatus or equipment, any accident damaging facilities upon which performance is dependent, failure of manufacturers to make scheduled deliveries of equipment, acts of the public enemy, sabotage, civil disturbance, strikes, impact of war or mobilization, national emergency, order by court or by public authority, government action or inaction, failure to obtain or renew a permit or a challenge to a permit, Change in Law, inability to obtain financing, or other similar cause.

The Contractor shall provide prompt written notice to the Entity of the occurrence of a Force Majeure Event and thereafter shall provide a detailed summary of the facts and circumstances causing the Force Majeure Event as soon as is reasonably practicable.

#### Changes in Law

In the event of the occurrence of a Change in Law that directly increases the Contractor's costs of owning, building or operating the Facility, the Electric Power price and Capacity price shall be adjusted to allow Contractor to recover the reasonable costs of complying with the Change in Law. "Change in Law" means (i) the adoption, modification, repeal or re-interpretation after the date of this Agreement of any law, regulation, permit (or renewal thereof) or other requirement of any federal, state or local governmental entity or regional transmission organization which affects the construction, operation or maintenance of the Facility or requires a capital addition or improvement to the Facility; or (ii) the imposition after the date of this Agreement by a federal, state or local governmental authority of a change in any relevant income tax statute, final or temporary regulation, or other guidance from a federal, state or local governmental authority, or any change in the interpretations to an income tax law attributable to a federal, state or local governmental authority, in each case that increases taxes assessed against Contractor or the Facility.

The Contractor shall provide prompt written notice to the Entity of the occurrence of a Change in Law and thereafter shall provide a detailed summary of the actual increased costs incurred by the Contractor as a result of such Change in Law.

**ATTACHMENT B**  
**CONTRACT AFFIDAVIT**

**A. AUTHORIZED REPRESENTATIVE**

I HEREBY AFFIRM THAT:

I am the President and the duly authorized representative of Energy Answers International, Inc. (the "Contractor") and that I possess the legal authority to make this Affidavit on behalf of myself and the Contractor for which I am acting.

**B. BID/PROPOSAL AFFIDAVIT AFFIRMATIONS VALID**

I FURTHER AFFIRM THAT:

To the best of my knowledge, information, and belief, each of the affirmations, certifications, or acknowledgments contained in that certain Procurement Affidavit dated October 1, 2009, and executed by (me) (Patrick F. Mahoney) for the purpose of obtaining the contract to which this Affidavit is attached remains true and correct in all material respects as if made as of the date of this Contract Affidavit and as if fully set forth herein.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Date:

3/2/11

By:

Patrick F. Mahoney

Name: Patrick F. Mahoney

Title: President

(Authorized Representative and Affiant)

**ATTACHMENT C**

[INSURANCE INFORMATION]



BALTIMORE COUNTY, MARYLAND  
EVIDENCE OF INSURANCE

THIS FORM MUST BE COMPLETED BY AUTHORIZED REPRESENTATIVE OF INSURANCE COMPANY OR INSURANCE AGENCY.

THE CONTRACTOR/VENDOR MUST MAINTAIN THE INSURANCE COVERAGES REQUIRED UNDER THE TERMS AND CONDITIONS OF THIS CONTRACT WHILE THIS CONTRACT IS IN EFFECT INCLUDING RENEWAL TERMS.

TO: BALTIMORE COUNTY, MARYLAND  
PURCHASING BUREAU  
400 Washington Avenue, Room 148  
Towson, Maryland 21204

Solicitation/Contract/Purchase Order No.

Energy Answers International Inc.  
Name of Contractor/Vendor

THIS IS TO CERTIFY THAT:

- (1) The undersigned has received and reviewed the INSURANCE PROVISIONS of the above-numbered Solicitation/Contract/ Purchase Order No.; and
- (2) This is evidence that insurance as identified above has been issued, is in force, and conveys all the rights and privileges afforded under the policy; and
- (3) The Contractor/Vendor has the following insurance coverage naming Baltimore County, Maryland and its agents, employees, officers, directors, and appointed and elected officials as an additional insured in conformity with the above provisions relating to the following:

<u>Type of Insurance</u>	<u>Insurance Company</u>	<u>Policy Number</u>
General Liability	<u>Chubb-Great Northern Ins.</u>	<u>3588-8960</u>
Automobile Liability	<u>Chubb-Federal Ins.</u>	<u>(11) 7354-9596</u>
Worker's Compensation and Employers' Liability	<u>Chubb-Federal Ins.</u>	<u>(12) 7839-0868</u>

THE UNDERSIGNED AGREES that should any of the insurance coverages indicated above be cancelled, not renewed, or changed in such a manner as would make the coverage not in conformity with the provisions mentioned above, thirty (30) days advance written notice shall be given to BALTIMORE COUNTY, MARYLAND at the address shown above; EXCEPT IN THE CASE OF NON-RENEWAL, notice shall be given as soon as known, if that be less than thirty (30) days, but in no event, less than (10) days. This notice requirement shall be reduced to only ten (10) days in case of cancellation for non-payment of insurance premiums for the coverages certified. All notice requirements shall identify the Contractor/Vendor and the number of the Solicitation/Contract/Purchase Order No.

Moore Insurance Agency Inc.

Name of Insurance Company or Agency

15 25th Street

Address

Watervliet NY 12189

City, State, Zip Code

518-273-9501

Area Code/Telephone No.

Signature of Authorized Representative of Insurance  
Company or Agency

Philip J. Moore  
Type/Print Name

3/4/11

Date

This Evidence of Insurance was adopted to eliminate the uncertainty regarding different forms of such documents and to reduce clerical errors. The use of this form should eliminate the need for securing documents showing renewals of insurance coverage and result in a more efficient administration of such documents by Baltimore County. In the event of any conflict between the Evidence of Insurance form and any subsequent ACORD forms, the Baltimore County's Evidence of Insurance form shall prevail.



## BALTIMORE COUNTY, MARYLAND

### I - INSURANCE PROVISIONS - GENERAL LIABILITY II - HOLD HARMLESS/INDEMNIFICATION CLAUSE III - PROPERTY LOST, DAMAGED OR DESTROYED PROVISION

#### I. - INSURANCE PROVISIONS

##### 1. GENERAL REQUIREMENTS

###### 1.1 Coverages Required:

Unless otherwise required by the specifications or the contract, the Contractor/Vendor shall purchase and maintain the insurance coverages listed herein.

###### 1.2 Evidence of Insurance Certificate:

Before starting work on the contract or prior to the execution of the Contract on those bid, the Contractor/Vendor shall provide Baltimore County, Maryland with an Evidence of Insurance certificate provided by the County, or an exact replica thereof, evidencing the required coverages.

###### 1.3 Baltimore County as Insured:

The liability coverage required must include Baltimore County, Maryland and its agents, employees, officers, directors, and appointed and elected officials as an additional insured.

###### 1.4 Contractor's/Vendor's Responsibility:

The providing of any insurance herein does not relieve the Contractor/Vendor of any of the responsibilities or obligations the Contractor/Vendor has assumed in the contract or for which the Contractor/Vendor may be liable by law or otherwise.

###### 1.5 Failure to Provide Insurance:

Failure to provide and continue in force the required insurance shall be deemed a material breach of the contract.

##### 2. INSURANCE COVERAGES

###### 2.1 General Liability Insurance

###### 2.1.1 Minimum Limits of Coverage:

Personal Injury Liability and Property Damage Liability Combined Single Limit - \$500,000 each occurrence

2.1.2 Such insurance shall protect the Contractor/Vendor from claims which may arise out of, or result from, the Contractor's/Vendor's operations under the contract, whether such operations be by the Contractor/Vendor, any subcontractor, anyone directly or indirectly employed by the Contractor/Vendor or Subcontractor, or anyone for whose acts any of the above may be liable.

###### 2.1.3 Minimum Coverages to be Included:

- (a) Independent Contractor's coverage;
- (b) Completed Operations and Products Liability coverage; and
- (c) Contractual Liability coverage.

###### 2.1.4 Damages not to be Excluded:

Such insurance shall contain no exclusions applying to operations by the Contractor/Vendor or any Subcontractor in

the performance of the Contract pertaining to: (a) Collapse of, or structural injury to, any building or structure; (b) Damage to underground property; or (c) Damage arising out of blasting or explosion.

###### 2.2 Automobile Liability Insurance

###### 2.2.1 Minimum Limits of Coverage:

Bodily Injury Liability and Property Damage Liability  
Combined Single Limit - \$500,000 any one accident

###### 2.2.2 Minimum Coverages to be Included:

Such insurance shall provide coverage for all owned, non-owned and hired automobiles.

###### 2.3 Workers' Compensation and Employers' Liability Insurance

Such insurance must contain statutory coverage, including  
Employers' Liability Insurance with limits of at least:  
Bodily Injury by Accident - \$250,000 each accident  
Bodily Injury by Disease - \$500,000 policy limit  
Bodily Injury by Disease - \$250,000 each employee

#### II. - HOLD HARMLESS/INDEMNIFICATION CLAUSE

The CONTRACTOR/VENDOR shall protect, hold free and harmless, defend and indemnify BALTIMORE COUNTY (including its officers, agents and employees) from all liability, penalties, costs, losses, damages, expenses, causes of action, claims or judgments (including attorneys' fees) resulting from INJURY TO, OR DEATH OF, ANY PERSON OR DAMAGE TO PROPERTY OF ANY KIND, which injury, death or damage arises out of, or is in any way connected with the performance of the work under this Contract. This agreement shall apply to any acts or omissions, negligent conduct, whether active or passive, including acts or omissions of Contractor's/Vendor's agents or employees; EXCEPT that this agreement shall not be applicable to injury, death or damage to property arising from the sole negligence of Baltimore County, its officers, agents and employees, including all liability for benefits under the Workers' Compensation Statute.

#### III. - PROPERTY LOST, DAMAGED OR DESTROYED

Any property or work to be provided by Contractor/Vendor will remain at the Contractor's/Vendor's risk until written acceptance by Baltimore County; and the Contractor/Vendor will replace, at Contractor's/Vendor's expense, all property or work lost, damaged or destroyed by any cause whatsoever.



## ATTACHMENT D

### OPTION TERM SHEET

The parties understand and agree that the Entity is not purchasing the Option or any items noted on this Option Term Sheet, however, the Contractor seeks to provide and include the Option and this Option Term Sheet in the Agreement. Should the Entity elect to purchase the Option or anything noted upon this Option Term Sheet, this election by the Entity shall be documented by a written amendment to this Agreement in accordance with Article 15 of this Agreement.

1. **Seller** Energy Answers Baltimore, LLC, a Delaware limited liability company ("Seller").
2. **Buyer** [ ] ("Buyer" and, together with Seller, each a "Party" and collectively the "Parties").
3. **Facility** An approximately 140 MW (nominal) resource recovery renewable energy power plant using processed refuse fuel, which shall be located at the former FMC site on the Fairfield Peninsula in Baltimore Maryland and associated off-site processed refuse fuel production facilities (the "Facility"). The Project will utilize Seller's patented and proven processed refuse fuel technology to generate steam and electricity. Commercial operation is expected to commence in the third quarter of 2013.
4. **Contract Quantity** Seller shall provide Buyer with all or part of the capacity and energy (up to 100 MW) in excess of the energy and capacity provided under the contract with the BRCPC participating entities, together with the renewable energy credits associated with such energy (the "Contract Quantity").
5. **Contract Term** The power purchase agreement for the Contract Quantity (the "PPA") will become effective on the date of execution and will have a term of twenty (20) years from the commencement of commercial operations of the Facility (the "Contract Term").
6. **Products**

Energy – electric energy. Buyer will pay Seller for all energy delivered to the Delivery Point.

Capacity – Seller will provide capacity from the Facility. Buyer will pay Seller for the capacity as part of the Purchase Price.

Renewable Energy Credits ("RECs") – For each MWh of energy generated from the Facility, Seller will provide either a Maryland Tier I or Tier II REC based on the Facility's regulatory designation. Buyer will pay Seller for the RECs as part of the Purchase Price.
7. **Purchase Price** Buyer will pay Seller for all energy delivered to the Delivery Point (or which Seller is capable of delivering to the Delivery Point but for any failure by Buyer to accept such energy) at a price of \$120.00 per

MWh (2010), escalating 3% per year. The Purchase Price includes energy and associated RECs and capacity.

The Purchase Price shall be adjusted on January 1 of each year during the Contract Term.

- |   |   |
|---|---|
| <b>8. Scheduling</b>                      | Buyer shall be responsible for all scheduling requirements. Seller shall cooperate with Buyer in satisfying scheduling requirements, including the timely preparation of forecasts of energy production from the Facility. Seller to provide day-ahead schedule of expected Energy. Scheduling requirements will be specified in the PPA.   |
| <b>9. Energy Delivery Point</b>           | The high voltage busbar of the Pumphrey substation, the PJM BGE Zone or a customer specified location in the PJM BGE Zone, at the sole discretion of the Seller.  |
| <b>10. Transmission</b>                   | Seller shall be responsible for delivering energy to the Delivery Point. Buyer shall be responsible for all transmission arrangements and costs necessary to receive energy at, and transmit or distribute it from, the Delivery Point.   |
| <b>11. Non-Delivery Days</b>              | The Seller may elect to designate up to thirty (30) days in a calendar year as days in which the Seller will not be required to deliver energy to the Buyer ("Non-Delivery Days"). The Seller shall make such designation of Non-Delivery Days in respect of a particular calendar year by delivery to the Buyer of written notice of the day or days so designated, such notice to be delivered to the Buyer no later than the 60 <sup>th</sup> day preceding the start of such calendar year. |
| <b>12. Forced Outages</b>                 | Seller shall be excused from its Delivery Obligations during certain forced outages to be specified.  |
| <b>13. Billing and Payment</b>            | Purchase Price payments shall be paid within 30 days after Seller issues an invoice to Buyer.   |
| <b>14. Change in Law</b>                  | During the Contract Term, upon and following the occurrence of certain changes in law to be specified that cause an increase in Seller's actual costs in performing its obligations, or in supplying products or services, under the PPA, the Purchase Price shall be adjusted to compensate Seller to the extent of such increased costs.  |
| <b>15. Force Majeure</b>                  | The PPA will include force majeure provisions that are appropriate for an agreement of this type.   |
| <b>16. Indemnification</b>                | The PPA will include indemnification provisions that are appropriate for an agreement of this type.   |
| <b>17. Representations and Warranties</b> | The PPA will include representations and warranties that are appropriate for an agreement of this type.   |

- 18. Default and Remedies** The PPA will include default and remedy provisions that are appropriate for an agreement of this type.
- 19. Termination Rights** Buyer and Seller shall have reasonable termination rights following the default of the other party. This provision will also allow either party to cure any such default and will also include cure rights for financing parties.
- 20. Assignment** The PPA will not be assignable by either Party without the other Party's consent, except that Seller may assign without prior consent from Buyer to its affiliates and to financing parties for the Facility.
- 21. Governing Law** The PPA shall be governed by, and construed in accordance with, the laws of the State of Maryland, without reference to principles of conflicts of laws that would result in the application of the law of a different jurisdiction.
- 22. Communications** All communications, questions, requests for information and any other matters regarding the PPA Terms must be directed to:
- Attention: Peter Ledig  
Email: [pjledig@swbell.net](mailto:pjledig@swbell.net)  
Phone: 713-303-0307
- 23. Lender Rights** The PPA will include customary protections for financing institutions in connection with financing for the Facility, including Buyer's agreement to provide consents to assignment and all other documents that are reasonably requested by Seller or by the lenders supporting the financing and construction of the Facility.

**ATTACHMENT E**

RFP



# BRCPC

## Baltimore Regional Cooperative Purchasing Committee

Visit our web site at <http://baltometro.org>

**REQUEST FOR PROPOSAL  
TERM CONTRACT FOR ELECTRIC POWER PURCHASE  
SOLICITATION NO. P-017  
AMENDMENT NO. 01  
REVISED Due Date: 10/09/09, Time: 2:00 PM**

**Direct all questions to the lead agency:**

Stephen P. Myer, CPPB, Senior Buyer

Phone: (410) 887-3884

Email: [smyer@baltimorecountymd.gov](mailto:smyer@baltimorecountymd.gov)

BALTIMORE COUNTY, MARYLAND

Office of Budget and Finance

Purchasing Bureau

400 Washington Avenue, Room 148

Towson, Maryland 21204-4665

Amendments to solicitations often occur prior to bid opening and sometimes within as little as 48 hours prior to bid opening. It is the potential vendor's responsibility to frequently visit the Purchasing web site to obtain amendments once they have downloaded a solicitation.

All original and duplicate bids and other attachments, related documents and correspondence, shall be typed or written in English. All prices/percentages and/or other monetary figures shall be in United States dollars.

**BIDDER CHECKLIST**

- ☐ Have you signed your bid?
- ☐ Have you signed the Procurement Affidavit?
- ☐ Have you filled out all applicable forms?
- ☐ Have you returned the original? (and required duplicate copies when required?)
- ☐ Have you signed and returned amendments?
- ☐ Have you included the bid bond, if required?

**BALTIMORE REGIONAL COOPERATIVE PURCHASING COMMITTEE  
REQUEST FOR PROPOSAL NO. P-017  
TERM CONTRACT FOR ELECTRIC POWER PURCHASE  
REVISED Due Date: 10/09/09, Time: 2:00 PM**

**AMENDMENT NO. 01**

1. Change the bid opening date and time to Friday, October 9, 2009 at 2:00 p.m.
2. The following firms attended the pre-proposal meeting on August 18, 2009:

Norman W. Lutkefedder	Solar Energy Focus, LLC	410-703-0730
Laura Williams	Cesarie, Inc.	301-292-4427
Drew Frank	Seven Seas Energy	
Pat Mahoney	Energy Answers	
Gary Kennedy	Wheelabrator Baltimore LP	
Liz Chuday	Highlands Production Company	
Nancy Cox	Blue Water Wind	
Kurt Kramer	Energy Answers	
3. Add the Minority Affidavit and W-9 from to the bid solicitation package. Both forms must be returned with the technical original proposal. Forms are attached to this amendment.
4. Replace the existing pages 16 and 17, the Insurance Provisions and Certificate of Insurance forms, with the new pages 16 and 17, the correct Insurance Provisions and Certificate of Insurance forms. Forms are attached to this amendment.
5. On Page 28, under Section 2.2, add the following jurisdiction:

Howard County Public Schools

Add the following to this section:

Baltimore County and BRCPC reserves the right to add or delete jurisdictions to this listing of participants.
6. The following questions were asked by prospective offerors:

Question 1:	Can an out of state business qualified to do business in Maryland assign the contract to a new company in Maryland subsidized by the original company after the proposal/bid date?
Answer 1:	See Paragraph 12 of the Sample Contract, on Page 41.

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Question 2:	Are the entity members of BRCPC subject to the state RPS?
Answer 2:	Yes.

Question 3:	Can we have a list identifying each member entity of the BRCPC, how much energy they will be committing to in the PPA, and the credit rating of each member entity?
Answer 3:	Each entity has been contracting with PEPCO Energy Services since 2006 and has a sound credit rating. The group collectively shall contract for up to 25 MW round the clock.

Question 4: Why is the contract length in the RFP 10 years? Can we propose a contract length of 20 or 25 years and what considerations will it be given? How will the evaluation criteria handle a longer contract term proposal?

Answer 4: 10 years is appropriate within context of this group's agreed upon energy strategy, and we believe that it is a suitable time frame to be a positive impact on overall project given liquidity / credit requirements associated with longer-term purchases. Yes, longer-terms will be considered. How the seller secures longer-term purchase will have greater consideration.

Question 5: We plan to submit more than one purchase option. Would you prefer it if we submit multiple price sheets, or should we complete one form showing multiple options?

Answer 5: Submit a price sheet for each pricing option.

Question 6: We understand that we will deliver all 25 MW of power to Pepco Energy Services (PES), and they will manage the metering of power for BRCPC. Will we invoice PES, or each entity member of BRCPC?

Answer 6: Delivery to PES, or successor supplier, i.e., holder of PJM subaccount will be affected via eschedule transaction in PJM emarket at contractually specified sink, e.g., BGE zone, or other delivery point as proposed. Metering is handled via retail delivery system of local utility and reported to BRCPC account by BGE. Specific metering is not relevant to the contract as it is delivered to a PJM subaccount held by a qualified retail supplier on behalf of BRCPC. Seller will issue one (1) invoice for monthly purchase to BRCPC's then current retail supplier of record who will issue a single payment per contract terms.

Question 7: Please explain who will be the counter-party in the Power Purchase Agreement: What is that party's credit rating? Will it stand behind subsidiary local buyers?

Answer 7: The counter-party, i.e., the financially responsible party, to the contract will be the BRCPC entities with delivery instructions to deliver to the qualified retail electric supplier of the BRCPC group.

Question 8: On page 32 section 12 Funding Out has language that creates a problem for building new wind generation. The language makes the project likely impossible to obtain financing. What contractual guarantees can be provided to overcome this funding out language?

Answer 8: Each jurisdiction's legislative branch approves a budget for each fiscal year. It is the intent of each jurisdiction to need electric power for its operational needs and each jurisdiction will budget for the cost of power for each fiscal year.

Question 9: Given the intermittent nature of renewable energy sources, we may not be able to deliver 25 MW at all times. We plan to construct enough nameplate capacity to meet BRCPC's 25 MW need for the majority of the time, given our standard capacity factors, however, there will be times when we are unable to deliver 25 MW. Do we need to supply firming power? Or is it acceptable to BRCPC that there will be times when we may be producing and therefore delivering less than 25 MW? The University PPA requires a fixed amount of energy and RECs be delivered to the Buyer each month. This is difficult given the RFP specifically allows for intermittent renewable energy. Please clarify.

Answer 9: BRCPC contemplates a firm deliver volume and quantity, i.e., the seller provides make up power to the extent its resources are short of contract volumes; however, BRCPC will entertain unit contingent offers, i.e., BRCPC will be responsible for such make up power through its PJM subaccount, with a suitable unit contingent discount.

Question 10: What will the committee be looking for and be emphasizing with the evaluations? Is there additional detail on the evaluation criteria? Please clarify how evaluators will score/rank proposals. How will the evaluation score low emissions compared relatively to no emissions? Is "no" emissions more important than "low", for example? Is there a point system or weighting of different sections of the responses?

Answer 10: The evaluation criteria is listed on Page 31, in Section 8 in order of importance. All information related to these criteria will be used in the evaluation process.

Question 11: Energy, capacity and REC's – There are not sections on the price proposal form to present pricing for each. How should we present prices since you are interested in all? Can we bid separately? How should we break out prices?

Answer 11: Respondents may respond with an all inclusive price that incorporates all aspects of energy, capacity and RECs requested, or may break out each component as it determines is appropriate. There is not a requirement to quote a single price; prices may be presented separately.

Question 12: What does it mean that generation facilities must have been located in the Baltimore Gas and Electric/PEPCO zones? What are your preferred delivery points? What are acceptable delivery points? Is delivery anywhere on the PJM grid acceptable?

Answer 12: BRCPC is seeking local resources physically located in the BGE and PEPCO zones due to their favorable effect on electric congestion into BGE zone; however, BRCPC will evaluate non-local resources that can be demonstrated to have a favorable impact on the BGE zone congestion. It would be helpful for respondent of non-local resources to provide an assessment of such favorable impacts on BGE zone. The preferred delivery point is PJM BGE zone, pnode ID 51292. BRCPC will entertain delivery to any other points in PJM. To the extent that respondent prefers delivery to another PJM point then BRCPC request that supplier provide an assessment of the expected congestion differential to BGE zone on a day-ahead market basis.



Question 13: Would you accept a strike price based on MD node prices or DE Node prices instead of physical delivery? Would you prefer a contract for differences and how would it be structured?

Answer 13: BRCPC prefers a physical delivery product to BGE Zone but will entertain a financially settled product. "Strike Price" implies an option product which is not of primary interest to BRCPC; however, BRCPC will consider an option structure. BRCPC will consider MD or DE nodal settlement; however, BRCPC requests that respondent provide an assessment of expected congestion relative to BGE Zone on the day-ahead market for any non-BGE Zone offers. BRCPC would consider contracts for differences, but prefers physical delivery to BGE Zone. Any such Contract for Differences would be settled at the specified delivery point and market (day-ahead or real-time) set forth by the respondent.

Question 14: What is the EDI qualification with BGE? (3. Proposal Requirements 3.1.5.5)

Answer 14: EDI is not necessary to effect power delivery to BRCPC. Power will be delivered via PJM internal bilateral schedule at delivery point and type of market (real-time or day-ahead). Financial products will settle on same time frame as final PJM monthly billing.

7. BRCPC's membership contracts for energy consulting services with South River Consulting. Although they will not be voting members of the evaluation team, they will advise the team during the evaluation process.

Wheelabrator Baltimore LP is a client of South River Consulting. South River Consulting has fully disclosed this relationship to the BRCPC membership. No employee, official, or agent of South River Consulting or its parent company EnerNOC shall engage in any discussion at all about this RFP bid solicitation, the evaluation process, including but not limited to the proposals submitted and all contract negotiations, the award of contract, or the executed contract with any employee, official, or agent of Wheelabrator Baltimore LP.

8. All other terms and conditions remain the same.

## MINORITY PARTICIPATION AFFIDAVIT

### A. AUTHORIZED REPRESENTATIVE

I HEREBY AFFIRM THAT:

I am the [title] \_\_\_\_\_ and the duly authorized representative of [business] \_\_\_\_\_ (the "Business") and that I possess the legal authority to make this Affidavit on behalf of myself and the Business for which I am acting.

### B. AFFIRMATION REGARDING MINORITY PARTICIPATION

I FURTHER AFFIRM THAT:

I am aware that, pursuant to the June 4, 2009 Executive Order of Baltimore County, Maryland, the following words have the meanings indicated.

(A) "Minority Business Enterprise" or "MBE" means a business enterprise that is owned, operated and controlled by one or more minority group members (African American, Hispanic American, Asian American, or Native American) who have at least 51% ownership and in which the minority group members have operational and managerial control, interest in capital and earnings commensurate with their percentage of ownership.

(B) "Women's Business Enterprise" or "WBE" means a business enterprise that is owned, operated and controlled by one or more women who have at least 51% ownership and in which the women have operational and managerial control, interest in capital and earnings commensurate with their percentage of ownership.

\_\_\_ The Business is a certified MBE with

☐ Maryland State Department of Transportation (MDOT)

☐ City of Baltimore

☐ Other Program: \_\_\_\_\_

\_\_\_ The Business is a certified WBE with

☐ Maryland State Department of Transportation (MDOT)

☐ City of Baltimore

☐ Other Program: \_\_\_\_\_

\_\_\_ The Business is not a certified MBE or WBE, however:

☐ The ownership of the Business consists of \_\_\_% minorities and \_\_\_% women (for a total of \_\_\_%), each of which has operational and managerial control, interest in capital and earnings commensurate with their percentage of ownership.

~~☐ The Business anticipates utilizing MBE or WBE subcontractors for \_\_\_% of the work on the contract.~~

☐ The Business is not a certified MBE or WBE nor is it 51% owned, operated and controlled by one or more minority group members or a woman.

☐ Due to the specific nature of work, this contract does not lend itself to subcontracting opportunities. Therefore, \_\_\_\_\_ is requesting a full waiver of the MBE/WBE requirement.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name:

Title:

(Authorized Representative and Affiant)

**Taxpayer Identification Number (TIN) and Certification**  
**(Substitute for IRS Form W-9)**  
**COMPLETE BOTH SIDES OF FORM**

Baltimore County, Maryland  
Office of Budget and Finance  
400 Washington Avenue, Room 148  
Towson, Maryland 21204

Certification of TIN and business name are required for all successful bidders prior to issuing a contract or purchase order. Completion of **SIDE 1** of this form is necessary to meet IRS regulations. All MBE/WBE vendors should also complete **SIDE 2**. For questions, call 410-887-3587.

**SIDE 1**

List your legal business name below, as shown on your income tax return. Sole proprietors should list their individual name as noted on your social security card. You may enter a business name on line 2. Other entities must list your business name as shown on Federal tax documents. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on the business name line (2). For limited liability companies (LLC) that are owned by an individual, the owner's name must be listed in the Name line (1) and the business name can be listed on the business name line (2). For limited liability companies that are corporations, partnerships, etc., enter the business name on Name line (1).

1. Name (as shown on your income tax return)

2. Business name, if different from above

Address

City State ZIP Code

Remittance Address, if different from above

City State ZIP Code

Contact Person Title

Phone Number ( ) - Ext: Fax Number ( ) -

E-mail address

**Taxpayer Identification Number (TIN)**

Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1. For individuals, this is your social security number (SSN). For other entities, it is your employer identification number (EIN). Note, this is the TIN shown on your federal tax documents.

**Social Security Number**

OR

**Employer Identification Number**

☐ **CHECK HERE IF YOU ARE EXEMPT FROM BACK-UP WITHHOLDING**

☐ **CHECK HERE IF YOU ARE TAX-EXEMPT, EXPLAIN:**

**Filing Status (Ownership) (LLC is not acceptable)**

<input type="checkbox"/> Individual	<input type="checkbox"/> Sole Proprietor
<input type="checkbox"/> Corporation	<input type="checkbox"/> Partnership
<input type="checkbox"/> Other: (explain)	

**CERTIFICATION:**

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
- I am a U.S. person (including a U.S. resident alien).

Signature of U.S. Person

Date

**SIDE 2**

<b>MBE / WBE Certification</b>	
<b>Maryland Department of Transportation (MDOT)</b>  Certification #: _____  Certification Date: ____ / ____ / ____  Pending: _____	<b>City of Baltimore</b>  Certification #: _____  Certification Date: ____ / ____ / ____  Pending: _____

<b>Business Ownership (Check Only One)</b>					
<input type="checkbox"/>	<b>G</b>	Government Entity	<input type="checkbox"/>	<b>O</b>	Other:
<input type="checkbox"/>	<b>H</b>	Disabled	<input type="checkbox"/>	<b>P</b>	Non Profit
<input type="checkbox"/>	<b>MA</b>	Minority-owned, Not small business	<input type="checkbox"/>	<b>W</b>	Woman-owned, Small business
<input type="checkbox"/>	<b>M</b>	Minority-owned, Small business	<input type="checkbox"/>	<b>WA</b>	Woman-owned, Not small business
<input type="checkbox"/>	<b>NS</b>	Non-minority-owned, small business	<input type="checkbox"/>	<b>X</b>	Woman-owned, Minority, Small business
<input type="checkbox"/>	<b>NL</b>	Non-minority-owned, Large business	<input type="checkbox"/>	<b>XA</b>	Woman-owned, Minority, Not small business

<b>Type of Business/Organization</b>			
<input type="checkbox"/>	Association	<input type="checkbox"/>	Attorney
<input type="checkbox"/>	Government Entity	<input type="checkbox"/>	Educational Institution
<input type="checkbox"/>	Medical Service Provider	<input type="checkbox"/>	Non-profit Organization
<input type="checkbox"/>	Other: (explain) _____	<input type="checkbox"/>	Financial Institution

<b>Ethnicity of Ownership (Check Only One)</b>					
<input type="checkbox"/>	<b>A</b>	Asian American	<input type="checkbox"/>	<b>I</b>	American Indian/Alaskan Native
<input type="checkbox"/>	<b>B</b>	African American	<input type="checkbox"/>	<b>N</b>	Non-minority
<input type="checkbox"/>	<b>H</b>	Hispanic American	<input type="checkbox"/>	<b>O</b>	Other Ethnic Group:

<b>Incorporation</b>	
Incorporation State: _____ OR Date Business Started ____ / ____ / ____	

<b>Signature</b>		
I certify that the information shown on this registration is true and correct. I will advise the Purchasing Bureau immediately, in writing, of any change affecting this data.		
Signature: _____	Title: _____	Date: _____



## BALTIMORE COUNTY, MARYLAND

### INSURANCE PROVISIONS

---

#### 1. GENERAL REQUIREMENTS

##### 1.1 Coverages Required:

Unless otherwise required by the specifications or the contract, the Contractor/Vendor shall purchase and maintain the insurance coverages listed herein.

##### 1.2 Certificate of Insurance:

Before starting work on the contract or prior to the execution of the Contract on those bid, the Contractor/Vendor shall provide Baltimore County, Maryland with a Certificate of Insurance provided by the County, or an exact replica thereof, evidencing the required coverages.

##### 1.3 Baltimore County as Insured:

The coverage required, excluding Worker's Compensation and Employers' Liability and Medical Malpractice Liability/Professional Liability/Errors and Omissions Liability, must include Baltimore County, Maryland and its agents, employees, officers, directors, and appointed and elected officials as an additional insured.

##### 1.4 Contractor's/Vendor's Responsibility:

The providing of any insurance herein does not relieve the Contractor/Vendor of any of the responsibilities or obligations the Contractor/Vendor has assumed in the contract or for which the Contractor/Vendor may be liable by law or otherwise.

##### 1.5 Failure to Provide Insurance:

Failure to provide and continue in force the required insurance shall be deemed a material breach of the contract.

#### 2. INSURANCE COVERAGES

##### 2.1 General Liability Insurance

###### 2.1.1 Minimum Limits of Coverage:

Personal Injury Liability and Property Damage Liability Combined Single Limit - \$500,000 each occurrence

2.1.2 Such insurance shall protect the Contractor/Vendor from claims which may arise out of, or result from, the Contractor's/Vendor's operations under the contract, whether such operations be by the Contractor/Vendor, any subcontractor, anyone directly or indirectly employed by the Contractor/Vendor or Subcontractor, or anyone for whose acts any of the above may be liable.

###### 2.1.3 Minimum Coverages to be Included:

- (a) Independent Contractor's coverage;
- (b) Completed Operations and Products Liability coverage; and
- (c) Contractual Liability coverage.

###### 2.1.4 Damages not to be Excluded:

Such insurance shall contain no exclusions applying to operations by the Contractor/Vendor or any Subcontractor in the performance of the Contract including but not limited to: (a) Collapse of, or structural injury to, any building or structure; (b) Damage to underground property; or (c) Damage arising out of blasting or explosion.

##### 2.2 Automobile Liability Insurance

###### 2.2.1 Minimum Limits of Coverage:

Bodily Injury Liability and Property Damage Liability  
Combined Single Limit - \$500,000  
any one accident

###### 2.2.2 Minimum Coverages to be Included:

Such insurance shall provide coverage for all owned, non-owned and hired automobiles.

##### 2.3 Workers' Compensation and Employers' Liability Insurance

Such insurance must contain statutory coverage, including Employers' Liability insurance with limits of at least

Bodily Injury by Accident - \$250,000 each accident  
Bodily Injury by Disease - \$500,000 policy limit  
Bodily Injury by Disease - \$250,000 each employee

##### 2.4 Valuable Papers and Records Coverage and Electronic Data Processing (Data and Media) Coverage

###### Minimum Limits of Coverage:

\$100,000 Per Claim and Each Occurrence  
\$100,000 in the Aggregate

##### 2.5 Other

Such other insurance in form and amount as may be customary for the type of business being undertaken by the Contractor/Vendor.



BALTIMORE COUNTY, MARYLAND  
CERTIFICATE OF INSURANCE

THIS FORM MUST BE COMPLETED BY A LEGALLY AUTHORIZED REPRESENTATIVE OF INSURANCE COMPANY OR INSURANCE AGENCY.

THE CONTRACTOR/VENDOR MUST MAINTAIN THE INSURANCE COVERAGES REQUIRED UNDER THE TERMS AND CONDITIONS OF THIS CONTRACT WHILE THIS CONTRACT IS IN EFFECT INCLUDING RENEWAL AND EXTENSION TERMS.

TO: BALTIMORE COUNTY, MARYLAND  
PURCHASING BUREAU  
400 Washington Avenue, Room 148  
Towson, Maryland 21204

Solicitation/Contract/Purchase Order No. \_\_\_\_\_

Name of Contractor/Vendor \_\_\_\_\_

THIS IS TO CERTIFY THAT:

- (1) The undersigned has received and reviewed the INSURANCE PROVISIONS of the above-numbered Solicitation/Contract/Purchase Order No.; and
- (2) The following insurance has been issued, is in force, and conveys all the rights and privileges afforded under the policy and as required under the Solicitation/Contract/Purchase Order; and

<u>Type of Insurance</u>	<u>Insurance Company</u>	<u>Policy Numbers</u>	<u>Amt. Of Coverage</u>
General Liability	_____	_____	_____
Automobile Liability	_____	_____	_____
Worker's Compensation and Employers' Liability	_____	_____	_____
Valuable Papers and Electronic Data	_____	_____	_____
Other	_____	_____	_____

- (3) General Liability, Automobile Liability and Valuable Papers and Electronic Data insurance coverage shall name Baltimore County, Maryland and its agents, employees, officers, directors, and appointed and elected officials as an additional insured.
- (4) The Worker's Compensation and Employers' Liability insurance coverage shall name Baltimore County, Maryland and its agents, employees, officers, directors, and appointed and elected officials as a certificate holder.

THE UNDERSIGNED AGREES that should any of the insurance coverages indicated above be cancelled, not renewed, or changed in such a manner as would make the coverage not in conformity with the provisions mentioned above, thirty (30) days advance written notice shall be given to BALTIMORE COUNTY, MARYLAND at the address shown above; EXCEPT IN THE CASE OF NON-RENEWAL, notice shall be given as soon as known, if that be less than thirty (30) days, but in no event, less than (10) days. This notice requirement shall be reduced to only ten (10) days in case of cancellation for non-payment of insurance premiums for the coverages certified. All notice requirements shall identify the Contractor/Vendor and the number of the Solicitation/Contract/Purchase Order No.

Name of Insurance Company or Agency \_\_\_\_\_

Signature of Authorized Representative of Insurance Company or Agency \_\_\_\_\_

Address \_\_\_\_\_

Type/Print Name \_\_\_\_\_

City, State, Zip Code \_\_\_\_\_

Date \_\_\_\_\_

Area Code/Telephone No. \_\_\_\_\_

This Certificate of Insurance was adopted to eliminate the uncertainty regarding different forms of such documents and to reduce clerical errors. Insurer may provide ACORD Certificates of Insurance also reflecting policy duration and amount of coverage, however, submission of an ACORD form does not satisfy the requirements of this procurement, and in the event of any conflict between this Certificate of Insurance form and any ACORD forms, the terms and conditions of this Baltimore County Certificate of Insurance form shall prevail.



# BRCPC

## Baltimore Regional Cooperative Purchasing Committee

Visit our web site at <http://baltometro.org>

### REQUEST FOR PROPOSAL TERM CONTRACT FOR ELECTRIC POWER PURCHASE SOLICITATION NO. P-017

Due Date: 10/02/09, Time: 2:00 PM

Pre-Proposal Conference: 08/18/09, Time: 1:30 PM

Direct all questions to the lead agency:

Stephen P. Myer, CPPB, Senior Buyer

Phone: (410) 887-3884

Email: [smyer@baltimorecountymd.gov](mailto:smyer@baltimorecountymd.gov)

BALTIMORE COUNTY, MARYLAND

Office of Budget and Finance

Purchasing Bureau

400 Washington Avenue, Room 148

Towson, Maryland 21204-4665

Amendments to solicitations often occur prior to bid opening and sometimes within as little as 48 hours prior to bid opening. It is the potential vendor's responsibility to frequently visit the Purchasing web site to obtain amendments once they have downloaded a solicitation.

All original and duplicate bids and other attachments, related documents and correspondence, shall be typed or written in English. All prices/percentages and/or other monetary figures shall be in United States dollars.

#### BIDDER CHECKLIST

- ☐ Have you signed your bid?
- ☐ Have you signed the Procurement Affidavit?
- ☐ Have you filled out all applicable forms?
- ☐ Have you returned the original? (and required duplicate copies when required?)
- ☐ Have you signed and returned amendments?
- ☐ Have you included the bid bond, if required?

**BALTIMORE REGIONAL COOPERATIVE PURCHASING COMMITTEE  
REQUEST FOR PROPOSAL NO. P-00  
TERM CONTRACT FOR ELECTRIC POWER PURCHASE**

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## BALTIMORE REGIONAL COOPERATIVE PURCHASING COMMITTEE (BRPC)

### GENERAL TERMS AND CONDITIONS FOR ALL SOLICITATIONS

#### 1. INSTRUCTIONS, FORMS, AND SPECIFICATIONS

- 1.1 Each of the participating jurisdictions hereto entered into a Revised and Restated Memorandum of Agreement for all BRPC cooperative purchasing solicitations. The Revised and Restated Memorandum of Agreement is attached hereto and incorporated herein.
- 1.2 All bids must be clearly identified with the solicitation number, title of the solicitation and the due date and time. All bids are to be submitted on and in accordance with forms as required by the lead jurisdiction's Purchasing Agent ("Purchasing Agent") and which are available at the office of the Purchasing Agent.
- 1.3 Each bid shall be accompanied by the bidder's affidavit regarding price fixing, gratuities, bribery, and discriminatory employment practices. If the bidder is a business entity, a duly and legally authorized representative of the business entity shall execute the affidavit. Affidavit will be provided to bidders by the Purchasing Agent.
- 1.4 Bids must be typed or written and signed in ink, unless the solicitation is bid electronically, in which case an electronic signature is acceptable. Erasures or alterations must be initialed in ink, unless the solicitation is bid electronically, in which case electronic initials are acceptable. If the bidder is a business entity, the bid shall be signed in ink (or in the case of electronic solicitation digitally) by a duly and legally authorized representative of the business entity. All bids shall be delivered sealed to the Purchasing Agent, no later than the time and date indicated herein. Bids received after the time or date indicated will not be considered.
- 1.5 Additional information or clarifications of any of the instructions or information contained herein may be obtained from the Purchasing Agent.
- 1.6 Any bidder who finds a discrepancy in or omission from the specifications, or who is in doubt as to their meaning or feels that the specifications are discriminatory, shall notify the Purchasing Agent in writing within 10 days before the scheduled opening of bids. Discrepancies or exceptions taken do not obligate the Purchasing Agent to change or supplement the specifications. The Purchasing Agent will notify all bidders in writing, by addendum duly issued, of any interpretations of specifications or instructions that are made.
- 1.7 Unless a written discrepancy, change, supplement, or exception to the specifications is noted on the bid detailing nonconformance, any part number or product number, etc. noted on the bid will be considered in full compliance with the specifications. Submission of a bid in response to this solicitation evidences the bidder's acceptance of the terms and conditions herein.
- 1.8 All official correspondence in regard to the specifications shall be directed to and/or will be issued in writing by the Purchasing Agent. Oral instructions or suggestions are not binding upon the Purchasing Agent or BRPC.
- 1.9 The Purchasing Agent will notify bidders of any changes, additions or deletions to the specifications by written addenda posted on the Purchasing Agent's web site at [www.baltimorecountymd.gov/purchasing](http://www.baltimorecountymd.gov/purchasing). Addenda to solicitations are sometimes issued within as little as 48 hours prior to bid opening. It is each potential bidder's sole responsibility to frequently visit the Purchasing Agent's web site to obtain all addenda.

2. BID DEPOSIT

- 2.1 A bid deposit may be required when indicated in the solicitation. Failure to submit the bid deposit, when required, to the Purchasing Agent will nullify the bid.
- 2.2 When required by the solicitation, a certified check, treasurer's check, U.S. Postal Money Order, or a bid bond must accompany each bid.
- 2.3 Bid deposits will be returned to each unsuccessful bidder upon the award of the solicitation by the Purchasing Agent, and to successful bidders upon its execution of the contracts with each participating jurisdiction and the meeting of bond requirements, if applicable.
- 2.4 Nonperformance by a successful bidder, failure to execute a contract with each participating jurisdiction, or failure to meet bond requirements within the time frame specified in the solicitation or award notification may result in the bid bond being forfeited as liquidated damages.

3. BASIS FOR AWARD OF CONTRACT

- 3.1 The Purchasing Agent shall provide written notification of the award of the solicitation to the lowest responsible and responsive bidder(s) for competitive sealed bids and based on best value for competitive negotiations as determined in the sole discretion of the Purchasing Agent. Each participating jurisdiction will execute their own contract with the successful bidder in connection with this solicitation.
- 3.2 Any other consideration for the award will be stated in the specifications.
- 3.3 Unless otherwise agreed in writing by the Purchasing Agent and the bidder(s) specified, all bids submitted shall be irrevocable for 120 calendar days following bid opening date. No bidder may withdraw its bid during that period.
- 3.4 When there is a conflict between the unit price or percentage and the extension, the unit price or percentage will prevail as the amount of the bid.
- 3.5 Bids shall be exclusive of all non-applicable Federal and Maryland state taxes. Tax exemption certificates will be furnished if required.
- 3.6 Each participating jurisdiction reserves the right to make payments via electronic funds transfers (EFT) or via procurement cards for matters for which that payment method may be appropriate.

4. CASH DISCOUNT AND NET PAYMENTS

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- 4.1 Cash discounts based on time of payment will not be considered in determining a solicitation award, but will be taken by each participating jurisdiction, if applicable, at time of payment.
- 4.2 Bids requiring payment within less than 30 calendar days from the date of invoice will be rejected.

5. PERFORMANCE AND PAYMENT BONDS

- 5.1 The successful bidder may be required to give security or bond for the performance of each participating jurisdiction's contract as determined by each applicable participating jurisdiction.

- 5.2 If required or applicable, a surety licensed to do business in the State of Maryland must issue the bonds for each participating jurisdiction's contract.

6. RESERVATIONS

- 6.1 The Purchasing Agent reserves the right to reject any or all bids, in whole or in part, when, in his reasoned and sole judgment, the public or BRCP's interest will be served thereby.
- 6.2 The Purchasing Agent may waive formalities or technicalities in bids as the interest of the public or BRCP may require, providing these differences do not violate the intent of the specifications, materially affect the operation for which the items are being purchased, or increase the price or estimated maintenance and repair cost.
- 6.3 Unless otherwise provided herein, each participating jurisdiction reserves the right to increase or decrease the quantities to be purchased at the prices bid. The quantity intended to be purchased and the period and/or percentage amount of any such reservation shall be stated in the solicitation specifications and/or in any applicable participating jurisdiction's contract.
- 6.4 Unless otherwise provided for in the bid documents, the Purchasing Agent reserves the right to make the award of the solicitation on a lump sum basis, individual item basis, or such combination as shall be in the best interest of the public and/or BRCP.

7. DELIVERIES

- 7.1 Bidders shall guarantee delivery in accordance with any delivery schedule as may be provided in the specifications and/or in each participating jurisdiction's contract.
- 7.2 All deliveries by a successful bidder shall be F.O.B. Destination and delivery costs and charges shall be included in the bid price.
- 7.3 Each participating jurisdiction reserves the right to levy a per diem charge to the successful bidder for each day the supplies or services are not delivered in accordance with the delivery schedule. The per diem charge, identified in the bid document and/or in each participating jurisdiction's resulting contract may be invoked at the discretion of each participating jurisdiction and said sum may be taken as liquidated damages and deducted from any compensation due to the successful bidder.

These liquidated damages are reasonable estimate of the participating jurisdiction's damages solely due to the participating jurisdiction's and/or the public's loss of use due to the delivery failure or the period of delivery delay and are not a penalty. It is very difficult, if not impossible, to accurately measure the damages to a participating jurisdiction and/or the public due to the participating jurisdiction's and/or the public's loss of use due to delivery failure or the period of delivery delay. In addition to the damages due to the participating jurisdiction's and/or the public's loss of use due to delivery failure or the period of delivery delay, the participating jurisdiction is likely to incur additional direct costs, including but not limited to, costs for the participating jurisdiction's employees' time and other costs the participating jurisdiction will continue to incur for administration of its contract due to the delivery failure or the period of delivery delay, all of which will be monitored by the participating jurisdiction, and if so required by the participating jurisdiction, the successful bidder shall pay such actual damages incurred during the delay period.

THE PARTIES HERETO UNDERSTAND AND AGREE THAT SUCCESSFUL BIDDER'S OBLIGATION TO PAY THE PARTICIPATING JURISDICTION FOR ACTUAL DAMAGES DUE TO DELIVERY FAILURE OR DURING THE DELIVERY DELAY PERIOD SHALL BE IN ADDITION TO THE SUCCESSFUL BIDDER'S OBLIGATION TO PAY THE LIQUIDATED DAMAGES DUE TO THE

PARTICIPATING JURISDICTION'S AND/OR THE PUBLIC'S LOSS OF USE DURING SUCH PERIOD.

The participating jurisdiction shall have the right, but not the obligation, to deduct the liquidated damages due to the participating jurisdiction's and/or the public's loss of use, and the participating jurisdiction's actual costs and costs to continue administration of the contract, from any monies due or any monies that may become due to the successful bidder.

- 7.4 When practical, the successful bidder must package and ship all products in packaging and containers made of recycled, recyclable or biodegradable materials. Bidders are encouraged to eliminate packaging, or to use the minimum amount necessary for product protection, in order to minimize waste to the greatest extent practicable.

8. COMPETITION

- 8.1 The name of any manufacturer, trade name of manufacturer, or vendor catalog number mentioned in the specifications is for the purpose of designating a standard of quantity and type and for no other reason. Minimum specifications where included, are not established arbitrarily to limit competition or to exclude otherwise competitive bidders.
- 8.2 A bidder shall offer a price on only one unit. Even though two or more units may meet specifications, bidders must determine which to offer. Submission by a bidder for more than one unit shall be sufficient cause for rejection of that specific item in the Purchasing Agent's sole discretion.
- 8.3 Bids that show any omission, irregularity, alteration of forms, additions not called for, conditional or unconditional unresponsive bids, or bids obviously unbalanced may be rejected in the sole discretion of the Purchasing Agent.
- 8.4 All bids must be accompanied by such descriptive literature as may be called for by the specifications.
- 8.5 If products to be provided or goods used by a successful bidder when providing a service contain any ingredients that could be hazardous or injurious to a person's health, a Material Safety Data Sheet (MSDS) must be provided to the Purchasing Agent.

9. HOLD HARMLESS/INDEMNIFICATION

The successful bidder shall indemnify, defend, and save harmless each of the participating jurisdiction and their respective employees, agents and officials against or from all costs, liabilities expenses, damages, injury, and loss including but not limited to, attorney's fees, which may be incurred or made against any of the participating jurisdictions, their respective employees, agents or officials and ~~resulting from any act or omission committed in the performance of the duties and obligations of the~~ successful bidder under this solicitation and/or each participating jurisdiction's resulting contract or anyone under agreement with the successful bidder to perform duties or obligations thereunder. The successful bidder shall allow each participating jurisdiction to participate in the defense of the participating jurisdiction, its employees, agents and officials, to the extent and as may be required by the participating jurisdiction and the successful bidder shall cooperate with the applicable participating jurisdiction in all aspects in connection therewith.

10. INSURANCE

- 10.1 The successful bidder shall, at all times during the term of each and every participating jurisdiction's contract, maintain and keep in force such insurance as Worker's Compensation,

Liability, and Property Damage as will protect the successful bidder from claims under Workmen's Compensation Acts and also such insurance as will protect the successful bidder and the participating jurisdictions from any other claims for damages for person injury, including death, as well as from claims for damages to any property of each participating jurisdiction or of the public, which may arise from operations under this solicitation and each participating jurisdiction's resulting contract, whether such operations are by the successful bidder or any subcontractor or any agent directly or indirectly employed by any of them.

- 10.2 Refer to the specifications for detailed insurance requirements. [Or insert the lead jurisdiction's requirements here.]

## 11 DISPUTES

Prior to award, in case of disputes as to whether an item or service quoted or delivered meets specifications, the decision of the Purchasing Agent shall be final and binding. The Purchasing Agent may request, in writing, the recommendation of participating jurisdictions or other objective source. Subsequent to award of the solicitation, in case of disputes as to whether an item or service quoted or delivered meets specifications, the decision of the applicable participating jurisdiction shall be final and binding with respect to that participating jurisdiction's contract.

## 12. TERMINATION

12.1 Termination for Convenience: Any participating jurisdiction may terminate its contract, in whole or in part, upon giving at least thirty (30) days written notice to the successful bidder. The participating jurisdiction shall pay all reasonable costs incurred by the successful bidder up to the date of termination in connection with that participating jurisdiction's contract only. The successful bidder will not be reimbursed for any anticipatory profits, which have not been earned up to the date of termination by any participating jurisdiction or BRCPC. The BRCPC will be promptly notified in writing of any termination hereunder by the applicable participating jurisdiction.

12.2 Termination for Default: When the successful bidder has not performed or has unsatisfactorily performed under the contract of any participating jurisdiction, that participating jurisdiction may terminate its contract for default and the successful bidder is entitled to any reasonable costs incurred by the successful bidder up to the date of termination. The successful bidder will not be reimbursed for any anticipatory profits which have not been earned up to the date of termination. The BRCPC will be promptly notified in writing of this termination by the applicable participating jurisdiction.

## 13. INTELLECTUAL PROPERTY

The successful bidder agrees to indemnify, protect, defend and save harmless each participating jurisdiction, its officers, agents, and employees with respect to any claim, action, cost (including but not limited to attorney's fees), or judgment for patent, copyright, or trademark infringement, or any other claim related to intellectual property or proprietary information arising out of purchase or use of goods or services or from any of the successful bidder's duties or obligations covered by this solicitation or any participating jurisdiction's resulting contract. The successful bidder shall allow each participating jurisdiction to participate in the defense of the participating jurisdiction, its employees, agents and officials, to the extent and as may be required by the participating jurisdiction and the successful bidder shall cooperate with the applicable participating jurisdiction in all aspects in connection therewith.

14. NON-ASSIGNMENT

No participating jurisdiction's contract resulting from this solicitation and the compensation, which may become due thereunder, are not assignable except with prior written approval of the applicable participating jurisdiction.

15. FACILITIES

The BRCPC and each participating jurisdiction reserve the right to inspect the bidder's facilities at no cost to the BRCPC or any participating jurisdiction at any time with prior notice.

16. AUTHORITY

Instructions, specifications, and proposals are issued, and all bids, quotations, orders, and purchases are made pursuant and subject to the enabling respective legislation of each of the participating jurisdictions.

17. FAILURE TO RESPOND

Bidders who fail to respond three (3) times in succession to solicitations without adequate justification may be removed from the bidder's list.

18. AVAILABILITY OF FUNDS

BRCPC has no obligation (contractual, financial, or otherwise) hereunder of under any resulting participating jurisdiction's contract. The contractual obligation of each participating jurisdiction under its respective contract resulting herefrom, is contingent upon the applicable jurisdiction's appropriation of funds from which payment by that participating jurisdiction shall be made.

19. GOVERNING LAW

19.1 This solicitation and each participating jurisdiction's contract resulting herefrom shall be governed by and construed in accordance with the laws of the State of Maryland without regard to any choice of law principles that would dictate the laws of any other jurisdiction. The exclusive venue for any and all actions related to this solicitation and each participating jurisdiction's contract resulting herefrom shall be the appropriate Federal or State court located within the State of Maryland.

19.2 The laws of Maryland shall govern the resolution of any issue arising in connection with each participating jurisdiction's contract, including, but not limited to, all questions on the validity of each such contract, the capacity of the parties to enter therein, any modification or amendment thereto, and the rights and obligations of the parties thereunder.

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19.3 All bidders must be registered to do business in the State of Maryland in accordance with the Annotated Code of Maryland Corporations and Associations Sec. 2-102 Formation generally, Sec. 7-202 Registration to do interstate and foreign\* business, and/or Sec. 7-203 Qualification to do intrastate. For information on registering or qualifying a corporation, LLC, LLP or LP call the Maryland Department of Assessments and Taxation (SDAT) at (410) 767-1340. Sole Proprietors and General Partnerships may call (410) 767-4991 or you may download the SDAT forms at: [www.dat.state.md.us/sdatweb/sdatforms.html](http://www.dat.state.md.us/sdatweb/sdatforms.html) - entity or by calling at (410) 767-1340 or Toll Free (888) 246-5941. The successful bidder will be required to submit a Good Standing Certificate (also known as "Certificate of Status") issued by SDAT.

*\*\*a corporation, association, or joint-stock company organized under the laws of the United States, another state of the United States, a territory, possession, or district of the United States, or a foreign country." Sec. 1-101 Annotated Code of Maryland Corporations and Associations.*

20. NON-WAIVER

Any waiver of any breach of covenants herein contained or in any participating jurisdiction's resulting contract to be kept and performed by the successful bidder shall not be deemed or considered as a continuing waiver and shall not operate to bar or prevent any participating jurisdiction from declaring a breach or default for any succeeding breach either of the same condition of covenant or otherwise.

21. INTEGRATION

These bid documents and each subsequent participating jurisdiction's contract with the successful bidder contain the entire understanding between the successful bidder and the applicable participating jurisdiction and any additions or modifications thereto may only be made in writing executed by the successful bidder and the applicable participating jurisdiction.

Any contract amendment of one participating jurisdiction shall not impact or effect any other participating jurisdiction's contract or BRCP.

22. SOCIO-ECONOMIC PROGRAMS

The participating jurisdictions have various socio-economic programs, which, if applicable, are detailed in the bid documents. Although there is no requirement that the bidder be a minority-owned, women-owned, disabled-owned business or small business, all under utilized businesses are encouraged to respond to this solicitation.

23. USE OF ILLEGAL IMMIGRANT LABOR

The use of illegal immigrant labor is in violation of the law and is strictly prohibited. Contractors and subcontractors must verify employment eligibility of workers in order to assure that they are not violating Federal/State/Local laws regarding illegal immigration. A compliance audit may be conducted by any participating jurisdiction or BRCP.

GENERAL TERMS AND CONDITIONS APPLICABLE TO  
STATE OF MARYLAND, BOARDS OF EDUCATION

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1. TOBACCO PRODUCTS

The use of tobacco products is not permitted on school property. Referencing Code of Maryland Regulations 13A.02.04, the use of tobacco products is not permitted in or on property owned by the Board of Education or the political subdivisions.

2. CHILD SEX OFFENDER NOTIFICATION

2.1 Maryland law requires certain child sex offenders to register with the local law enforcement agency. One of the purposes of this law, found in Article 27§ 792, is to inform school systems when a child sex offender is residing or working in the area. When the child sex offender registers, the local police are required to notify the Superintendent of Schools, and the Superintendent, in turn, is required to send a notice to school principals.

- 2.2 A successful bidder and/or its agents working for the political subdivisions or the Board of Education, shall not employ convicted child sex offenders to work on projects for public schools if they, as a result, are required to perform delivery, installation, repair, construction or any other kind of services on political subdivision property. Further, Maryland Law effective June 22, 2006, requires that any person who enters a contract with a county board of education or a non-public school "may not knowingly employ an individual to work at a school" if the individual is a registered sex offender. A successful bidder and/or its agents who violate this requirement is guilty of a misdemeanor and if convicted may be subject to up to five years imprisonment and/or a \$5,000 fine.
- 2.3 A successful bidder shall screen their work-forces to ensure that a registered sex offender does not perform work at a school and also ensure that a subcontractor, independent contractor, successful bidder and/or any agent of the successful bidder conducts screening of its personnel who may work at a school. The term "work force" is intended to refer to all of the successful bidder's direct employees, subcontractors, agents, and/or independent contractors it used to perform the work. Violations of this provision may cause a participating jurisdiction or political subdivision, or Board of Education to take action against the successful bidder up to and including termination of the applicable contract.
- 2.4 To assist you in identifying convicted child sex offenders, the schools have the list of convicted child sex offenders, which you are welcome to view. The schools maintain the list and update the list as new offenders are identified, however, it is solely the responsibility of the successful bidder to comply with this General Term provision.



## Additional General Instructions for Solicitations

### 1. Instructions, Forms and Specifications

1.1 Bidders finding any discrepancy in or omission from the specifications, in doubt as to meaning, or feeling that the specifications are discriminatory, shall notify the Purchasing Bureau in writing at once, but in no case later than five (5) business days prior to the scheduled opening of bids. Exceptions stated do not obligate BRCPD to change the specifications. The Purchasing Bureau will notify all bidders in writing, by amendment duly issued, of any substantive revisions to specifications or instructions.

1.2 Unless a written exception detailing nonconformance to specifications is noted on the quotation, any part number, product number, etc., noted on the bid will be considered in full compliance with the specifications.

1.3 Submission of a bid in response to this solicitation evidences the bidder's acceptance of the Terms and Conditions therein.

### 2. Award of Solicitations

2.1 Awards on Requests for Quotations and Invitations to Bid will be made within ninety (90) days after bid opening unless otherwise indicated in this solicitation. No bidder will be allowed to withdraw a bid during that period.

2.2 When there is a conflict between the unit price or percentage and the extension, the unit price or percentage will prevail as the amount of the bid.

2.3 BRCPD will not pay interest charges or other penalties for invoice payments made within the terms specified.

2.4 Prices quoted shall be exclusive of all non-applicable Federal and Maryland State taxes. Tax exemption certificate will be furnished if required.

2.5 BRCPD reserves the right to consider making payments via electronic funds transfers (EFT) on contracts for which this payment vehicle may be appropriate.

### 3. Reservations

3.1 The Purchasing Agent may waive minor differences, irregularities, and technicalities in the specifications, provided they neither violate the specification's intent, materially affect the operation for which the items or services are being purchased,

nor increase estimated maintenance and repair costs to BRCPD.

### 4. Delivery

4.1 All bidders and successful vendors are to ensure that packaging materials used for this requirement are not made of non-recyclable Styrofoam (Polystyrene). Additionally, any materials used in packing to cushion, protect and ship are to be made of recycled, recyclable or biodegradable materials.

### 5. Competition

5.1 Specifications are based on BRCPD needs and uses, estimated costs of operations and maintenance, and other significant and/or ensure limiting factors to meet BRCPD policies. Minimum specifications where included, are not established arbitrarily to limit competition or to exclude otherwise competitive bidders.

5.2 Unless multiple or alternate bids are requested in the solicitation, these bids may not be accepted. However, if a bidder clearly indicates a base bid, it shall be considered for award as though it were the only bid submitted by the bidder.

6. **Minority Business Enterprise (MBE) and Small Business Notice:** Although there is no requirement that the contractor be an MBE, a Woman-Owned Enterprise (WBE), or a Small Business, M/MBE's and small businesses are encouraged to respond to this solicitation.

### 7. Authority

7.1 In case of disputes as to whether an item or service quoted or delivered meets specifications, the decision of the Purchasing Agent or authorized representative shall be final and binding on both parties. ~~The Purchasing Agent may request the recommendation in writing of the head of the using agency, the Standards and Specifications Committee, or other objective sources.~~

7.2 Bidders desiring to appeal a decision of the Purchasing Bureau must deliver written protests to the Purchasing Bureau within 10 days of notification of award. The Purchasing Agent or designee reviews the protested decision, and responds within 10 working days of receipt of protests.

Rev. 11/02

**BALTIMORE COUNTY, MARYLAND  
PROCUREMENT AFFIDAVIT**

**A. AUTHORIZED REPRESENTATIVE**

**I HEREBY AFFIRM THAT:**

I am the [title] \_\_\_\_\_ and the duly authorized representative of [business] \_\_\_\_\_ (the "Business") and that I possess the legal authority to make this Affidavit on behalf of myself and the Business for which I am acting.

**B. AFFIRMATION REGARDING BRIBERY CONVICTIONS**

**I FURTHER AFFIRM THAT:**

Neither I, nor to the best of my knowledge, information, and belief, the Business, nor any of its officers, directors, partners, or any of its employees directly involved in obtaining or performing contracts with public bodies (as is defined in Section 16-101(f) of the State Finance and Procurement Article of the Annotated Code of Maryland), has been convicted of, or has had probation before judgment imposed pursuant to Article 27, Section 841 of the Annotated Code of Maryland, or has pleaded nolo contendere to a charge of, bribery, attempted bribery, or conspiracy to bribe in violation of Maryland law, or of the law of any other state or federal law, except as follows [Indicate the reasons why the affirmation cannot be given and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of person(s) involved, and their current positions and responsibilities with the Business]:

\_\_\_\_\_

\_\_\_\_\_

**C. AFFIRMATION REGARDING OTHER CONVICTIONS**

**I FURTHER AFFIRM THAT:**

Neither I, nor to the best of my knowledge, information, and belief, the Business, nor any of its officers, directors, partners, or any of its employees directly involved in obtaining or performing contracts with public bodies, has:

(1) Been convicted under state or federal statute of a criminal offense incident to obtaining, attempting to obtain, or performing a public or private contract, fraud, embezzlement, theft, forgery, falsification or destruction of records, or receiving stolen property;

(2) Been convicted of any criminal violation of a state or federal antitrust statute;

(3) Been convicted under the provisions of Title 18 of the United States Code for violation of the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. §1961, et seq., or the Mail Fraud Act, 18 U.S.C. §1341, et seq., for acts arising out of the submission of bids or proposals for a public or private contract;

(4) Been convicted of a violation of the State Minority Business Enterprise Law, Section 14-308 of the State Finance and Procurement Article of the Annotated Code of Maryland;

(5) Been convicted of conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any law or statute described in subsection (1), (2), (3), or (4) above;

(6) Been found civilly liable under a state or federal antitrust statute for acts or omissions in connection with the submission of bids or proposals for a public or private contract;

(7) Admitted in writing or under oath, during the course of an official investigation or other proceedings, acts or omissions that would constitute grounds for conviction or liability under any law or statute described above, except as follows [indicate reasons why the affirmations cannot be given, and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of the person(s) involved and their current positions and responsibilities with the Business, and the status of any debarment]:

---

#### D. AFFIRMATION REGARDING DEBARMENT

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the Business, nor any of its officers, directors, partners, or any of its employees directly involved in obtaining or performing contracts with public bodies, has ever been suspended or debarred (including being issued a limited denial of participation) by any public entity, except as follows [list each debarment or suspension providing the dates of the suspension or debarment, the name of the public entity and the status of the proceeding, the name(s) of the person(s) involved and their current positions and responsibilities with the Business, the grounds of the debarment or suspension, and the details of each person's involvement in any activity that formed the grounds of the debarment or suspension]:

---

#### E. AFFIRMATION REGARDING DEBARMENT OF RELATED ENTITIES

I FURTHER AFFIRM THAT:

(1) The Business was not established and it does not operate in a manner designed to evade the application of or defeat the purpose of debarment pursuant to Sections 16-101, et seq., of the State Finance and Procurement Article of the Annotated Code of Maryland; and

(2) The Business is not a successor, assignee, subsidiary, or affiliate of a suspended or debarred business, except as follows: [you must indicate the reasons why the affirmations cannot be given without qualification]:

---

#### F. SUB-CONTRACT AFFIRMATION

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the Business, has knowingly entered into a contract with a public body under which a person debarred or suspended under Title 16 of the State Finance and Procurement Article of the Annotated Code of Maryland will provide, directly or indirectly, supplies, services, architectural services, construction related services, leases of real property, or construction.

---

#### G. AFFIRMATION REGARDING COLLUSION

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the Business, nor any of its officers, directors, members or partners, nor any of its employees, have in any way:

(1) Agreed, conspired, connived, or colluded to produce a deceptive show of competition in the compilation of the accompanying bid or offer that is being submitted;

(2) In any manner, directly or indirectly, entered into any agreement of any kind to fix the bid price or price proposal of the bidder or offeror or of any competitor, or otherwise take any action in restraint of free competitive bidding in connection with the contract for which the accompanying bid or offer is submitted;

(3) Colluded with anyone to obtain information concerning the bid that would give the Business an unfair advantage over others.

#### H. POLITICAL CONTRIBUTION DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

The Contractor affirms that it is aware of, and will comply with, the provisions of Sections 14-101 through 14-108 of the Election Law Article of the Annotated Code of Maryland, which require that every person who makes, during any 12-month period, one or more contracts, with one or more Maryland governmental entities involving cumulative consideration, or at least \$100,000.00, shall file with the State Board of Elections certain specified information to include disclosure of attributable political contributions in excess of \$500 during defined reporting periods.

#### I. CERTIFICATION OF CORPORATION REGISTRATION AND TAX PAYMENT

I FURTHER AFFIRM THAT:

(1) The Business is a (Maryland) ( ) corporation, that it (is) (is not) registered in accordance with the Corporations and Associations Article of the Annotated Code of Maryland, that it (is) (is not) in good standing in the State of Maryland, and that it (has) (has not) filed all of its annual reports, together with filing fees, with the Maryland State Department of Assessments and Taxation, and that the name and address of its resident agent filed with the State Department of Assessments and Taxation is:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

(If none, so state).

(2) Except as validly contested, the Business has paid, or has arranged for payment of, all taxes due the State of Maryland and Baltimore County, and has filed all required returns and reports with the Comptroller of the Treasury, the State Department of Assessments and Taxation, and the Employment Security Administration, as applicable, and will have paid all withholding taxes due the State of Maryland prior to final settlement.

#### J. CONTINGENT FEES

I FURTHER AFFIRM THAT:

The Business has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee or agent working for the Business, to solicit or secure the Contract, and that the Business has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee or agent, any fee or other consideration contingent on the making of the Contract.

#### K. NONDISCRIMINATION IN EMPLOYMENT STATEMENT

I FURTHER AFFIRM THAT:

~~During the performance of any contract awarded pursuant to the solicitation of which this affidavit is a part:~~

- (1) The Business will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, national origin, marital status, sexual orientation, genetic information, or disability unrelated in nature and extent so as to reasonably preclude the performance of the employment, or because of the individual's refusal to submit to a genetic test or make available the results of a genetic test. The Business will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, age, national origin, marital status, sexual orientation, genetic information, or disability unrelated in nature and extent so as to reasonably preclude the performance of the employment, or because of the individual's refusal to submit to a genetic test or make available the results of a genetic test. Such action shall include, but not be limited to the following: employment, promotion, upgrading, demotion or transfer, rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Business agrees to post

in conspicuous places, available to employees and applicants for employment, notices to be provided by the owner setting forth provisions of this nondiscrimination clause.

(2) The Business will, in all solicitations or advertisements for employees placed by or on behalf of the Business, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, age, national origin, marital status, sexual orientation, genetic information, or disability unrelated in nature and extent so as to reasonably preclude the performance of the employment, or because of the individual's refusal to submit to a genetic test or make available the results of a genetic test.

(3) The Business shall send to each labor union or representative of workers with which the Business has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the owner, advising the said labor union or workers' representative of these commitments, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Business shall furnish, if requested by the County, a compliance report concerning our employment practices and policies in order for the County to ascertain compliance with the special provisions of this affidavit concerning nondiscrimination in employment.

(5) In the event of the Business's noncompliance with the nondiscrimination clause of this affidavit, the contract may be canceled, terminated, or suspended in whole or in part, and the Business may be declared ineligible for further County work.

(6) The Business shall include the special provisions outlined herein pertaining to nondiscrimination in employment in every subcontract, so that such nondiscrimination in employment provisions shall be binding on each subcontractor or vendor.

#### L. FOREIGN CONTRACTS

##### I FURTHER AFFIRM THAT:

The Contractor affirms that it is aware of, and will comply with, the provisions of Sections 10-2-110 Article 10. Finance, Title 2 – Purchasing, Baltimore County Code 2003, which requires that prior to the award of a contract for services under the provisions of this title, and during the entire term of a contract award, the bidder or vendor shall disclose to the County whether any services covered by the bid or contract, including any subcontracted services, will be performed outside the United States. The disclosure shall be made to the Office of Budget and Finance, Purchasing Bureau.

#### M. ACKNOWLEDGMENT

I ACKNOWLEDGE THAT this Affidavit is to be furnished to the County and may be distributed to units of (1) Baltimore County; (2) the State of Maryland; (3) other counties or political subdivisions of the State of Maryland; (4) other states; and (5) the federal government. I further acknowledge that this Affidavit is subject to applicable laws of the United States and the State of Maryland, both criminal and civil, and that nothing in this Affidavit or any contract resulting from the submission of this bid or proposal shall be construed to supersede, amend, modify or waive, on behalf of Baltimore County, or the State of Maryland or any unit of the State of Maryland having jurisdiction, the exercise of any statutory right or remedy conferred by the Constitution and the laws of Maryland with respect to any misrepresentation made or any violation of the obligations, terms and covenants undertaken by the Business with respect to (a) this Affidavit, (b) the contract, and (3) other Affidavits comprising part of the contract.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name:

Title:

(Authorized Representative and Affiant)



## BALTIMORE COUNTY, MARYLAND

- I - INSURANCE PROVISIONS – GENERAL LIABILITY
- II - HOLD HARMLESS/INDEMNIFICATION CLAUSE
- III - PROPERTY LOST, DAMAGED OR DESTROYED PROVISION

### I. - INSURANCE PROVISIONS

#### 1. GENERAL REQUIREMENTS

- 1.1 Coverages Required:  
Unless otherwise required by the specifications or the contract, the Contractor/Vendor shall purchase and maintain the insurance coverages listed herein.
- 1.2 Evidence of Insurance Certificate:  
Before starting work on the contract or prior to the execution of the Contract on those bid, the Contractor/Vendor shall provide Baltimore County, Maryland with an Evidence of Insurance certificate provided by the County, or an exact replica thereof, evidencing the required coverages.
- 1.3 Baltimore County as Insured:  
The liability coverage required must include Baltimore County, Maryland and its agents, employees, officers, directors, and appointed and elected officials as an additional insured.
- 1.4 Contractor's/Vendor's Responsibility:  
The providing of any insurance herein does not relieve the Contractor/Vendor of any of the responsibilities or obligations the Contractor/Vendor has assumed in the contract or for which the Contractor/Vendor may be liable by law or otherwise.
- 1.5 Failure to Provide Insurance:  
Failure to provide and continue in force the required insurance shall be deemed a material breach of the contract.

#### 2. INSURANCE COVERAGES

- 2.1 General Liability Insurance
  - 2.1.1 Minimum Limits of Coverage:  
Personal Injury Liability and Property Damage Liability Combined Single Limit - \$500,000 each occurrence
  - 2.1.2 Such insurance shall protect the Contractor/Vendor from claims which may arise out of, or result from, the Contractor's/Vendor's operations under the contract, whether such operations be by the Contractor/Vendor, any subcontractor, anyone directly or indirectly employed by the Contractor/Vendor or Subcontractor, or anyone for whose acts any of the above may be liable.
  - 2.1.3 Minimum Coverages to be Included:
    - (a) Independent Contractor's coverage;
    - (b) Completed Operations and Products Liability coverage; and
    - (c) Contractual Liability coverage.
  - 2.1.4 Damages not to be Excluded:  
Such insurance shall contain no exclusions applying to operations by the Contractor/Vendor or any Subcontractor in

the performance of the Contract pertaining to: (a) Collapse of, or structural injury to, any building or structure; (b) Damage to underground property; or (c) Damage arising out of blasting or explosion.

#### 2.2 Automobile Liability Insurance

- 2.2.1 Minimum Limits of Coverage:  
Bodily Injury Liability and Property Damage Liability  
Combined Single Limit - \$500,000 any one accident
  - 2.2.2 Minimum Coverages to be Included:  
Such insurance shall provide coverage for all owned, non-owned and hired automobiles.
- #### 2.3 Workers' Compensation and Employers' Liability Insurance
- Such insurance must contain statutory coverage, including  
Employers' Liability insurance with limits of at least:  
Bodily Injury by Accident - \$250,000 each accident  
Bodily Injury by Disease - \$500,000 policy limit  
Bodily Injury by Disease - \$250,000 each employee

### II. - HOLD HARMLESS/INDEMNIFICATION CLAUSE

The CONTRACTOR/VENDOR shall protect, hold free and harmless, defend and indemnify BALTIMORE COUNTY (including its officers, agents and employees) from all liability, penalties, costs, losses, damages, expenses, causes of action, claims or judgments (including attorneys' fees) resulting from INJURY TO, OR DEATH OF, ANY PERSON OR DAMAGE TO PROPERTY OF ANY KIND, which injury, death or damage arises out of, or is in any way connected with the performance of the work under this Contract. This agreement shall apply to any acts or omissions, negligent conduct, whether active or passive, including acts or omissions of Contractor's/Vendor's agents or employees; EXCEPT that this agreement shall not be applicable to injury, death or damage to property arising from the sole negligence of Baltimore County, its officers, agents and employees, including all liability for benefits under the Workers' Compensation Statute.

### III. - PROPERTY LOST, DAMAGED OR DESTROYED

Any property or work to be provided by Contractor/Vendor will remain at the Contractor's/Vendor's risk until written acceptance by Baltimore County; and the Contractor/Vendor will replace, at Contractor's/Vendor's expense, all property or work lost, damaged or destroyed by any cause whatsoever.



BALTIMORE COUNTY, MARYLAND  
EVIDENCE OF INSURANCE

THIS FORM MUST BE COMPLETED BY AUTHORIZED REPRESENTATIVE OF INSURANCE COMPANY OR INSURANCE AGENCY.

THE CONTRACTOR/VENDOR MUST MAINTAIN THE INSURANCE COVERAGES REQUIRED UNDER THE TERMS AND CONDITIONS OF THIS CONTRACT WHILE THIS CONTRACT IS IN EFFECT INCLUDING RENEWAL TERMS.

TO: BALTIMORE COUNTY, MARYLAND  
PURCHASING BUREAU  
400 Washington Avenue, Room 148  
Towson, Maryland 21204

Solicitation/Contract/Purchase Order No.

Name of Contractor/Vendor

THIS IS TO CERTIFY THAT:

- (1) The undersigned has received and reviewed the INSURANCE PROVISIONS of the above-numbered Solicitation/Contract/ Purchase Order No.; and
- (2) This is evidence that insurance as identified above has been issued, is in force, and conveys all the rights and privileges afforded under the policy; and
- (3) The Contractor/Vendor has the following insurance coverage naming Baltimore County, Maryland and its agents, employees, officers, directors, and appointed and elected officials as an additional insured in conformity with the above provisions relating to the following:

Type of Insurance	Insurance Company	Policy Number
General Liability	_____	_____
Automobile Liability	_____	_____
Worker's Compensation and Employers' Liability	_____	_____

THE UNDERSIGNED AGREES that should any of the insurance coverages indicated above be cancelled, not renewed, or changed in such a manner as would make the coverage not in conformity with the provisions mentioned above, thirty (30) days advance written notice shall be given to BALTIMORE COUNTY, MARYLAND at the address shown above; EXCEPT IN THE CASE OF NON-RENEWAL, notice shall be given as soon as known, if that be less than thirty (30) days, but in no event, less than (10) days. This notice requirement shall be reduced to only ten (10) days in case of cancellation for non-payment of insurance premiums for the coverages certified. All notice requirements shall identify the Contractor/Vendor and the number of the Solicitation/Contract/Purchase Order No.

Name of Insurance Company or Agency

Signature of Authorized Representative of Insurance Company or Agency

Address

Type/Print Name

City, State, Zip Code

Date

Area Code/Telephone No.

This Evidence of Insurance was adopted to eliminate the uncertainty regarding different forms of such documents and to reduce clerical errors. The use of this form should eliminate the need for securing documents showing renewals of insurance coverage and result in a more efficient administration of such documents by Baltimore County. In the event of any conflict between the Evidence of Insurance form and any subsequent ACORD forms, the Baltimore County's Evidence of Insurance form shall prevail.

**MINORITY BUSINESS ENTERPRISES PARTICIPATION**  
**BALTIMORE COUNTY, MARYLAND**  
**OFFICE OF BUDGET AND FINANCE, PURCHASING BUREAU**

**GENERAL**

**County Policy:** It is the policy of Baltimore County, Maryland that minority business enterprises and women business enterprises, shall have the maximum opportunity to participate in the performance of contracts financed in whole by County funds. A minimum goal of 12% is to be awarded, in the aggregate, to MBE firms.

**Responsibility:** The bidder agrees to ensure that minority business enterprises and female contractors as defined by the Executive Order have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole with County funds provided under this Agreement. In this regard, all bidders shall take all necessary and reasonable steps to ensure that minority business enterprises and female contractors have the maximum opportunity to compete for and perform contracts. Baltimore County, Maryland, and its bidders shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of this contract.

**DEFINITIONS**

For the purpose of these requirements, the following terms apply:

**APPROVED MBE LISTINGS**

Published compilations of approved and certified minority businesses, contractors, subcontractors, material suppliers, etc.:

DIRECTORY OF MINORITY BUSINESS ENTERPRISE (MDOT),  
MINORITY BUSINESS DIRECTORY OF THE CITY OF BALTIMORE.

**BC DPW**

Baltimore County Department of Public Works.

**BC MBE OFFICER**

The Baltimore County employee who provides guidance to the County on MBE-related matters pertaining to applicable procurements.

**BUSINESS ENTERPRISE**

Any legal entity which is organized in any form other than as a joint venture (e.g., sole proprietorship, partnership, corporation, etc.) to engage in lawful commercial transactions.

**COUNTY**

Baltimore County, Maryland

**COUNTY REPRESENTATIVE**

MBE Officer or an employee of the County who deals with laws and regulations pertaining to minority business enterprises -- Can be reached at (410) 887-3407 for more information regarding the MBE program.

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**MINORITY BUSINESS ENTERPRISE (MBE)**

A business which is owned and controlled by one or more minority persons or one or more women as defined below:

**Minority:** An individual who is black, Hispanic, Asian American, or American Indian, regardless of race or ethnicity, pursuant to the County's Minority Business Enterprise Program guidelines..

**Women:** A female, regardless of race or ethnic background.

**Owned and controlled:** A small business which is:

A sole proprietorship legitimately owned by a individual who is a minority person;



A partnership controlled by minority persons and in which at least 51% of the ownership is held by minority persons;  
or

A corporation controlled by minority persons and in which at least 51% of the ownership and managerial control is held by minority persons pursuant to the County's Minority Business Enterprise Program guidelines.

#### **MBE PARTICIPATION PROGRAM**

The following documents submitted by the bidder or the proposer pursuant to the bid solicitation:

Schedule for Participation of Minority Business Enterprises;

Minority Contractor Project Disclosure and Participation Statement;

Minority Contractor Unavailability Certificate (if appropriate);

#### **MDOT**

Maryland Department of Transportation.

#### **BIDDER'S ACTION**

**Seeking Commitments:** The bidder will seek commitments, by subcontract or otherwise, from minority business enterprises for supplies and services, any combined value of which equals or exceeds the appropriate percent of the total value of the contract.

**Expenditures for Materials and Supplies:** A bidder may count toward its MBE goal expenditures for materials and supplies obtained from MBE suppliers and manufacturers, provided that the MBE's assume the actual and contractual responsibility for the provision of the materials and supplies.

**Information to be Supplied:** The apparent low bidder shall submit to the County, with their bid, the following information:

- a. The name of an employee designated as the bidder's liaison officer for minority affairs.
- b. A completed Schedule for Participation of Minority Business Enterprises from among those names appearing in the Approved MBE Listings.
- c. A Minority Contractor Project Disclosure and Participation Statement, completed and signed by the prime contractor and minority business enterprise for each minority business listed in the Schedule of Participation.
- d. If the proposed MBE participation does not meet the MBE contract goal, information sufficient to demonstrate that the bidder has made every effort to meet these goal will be required.

#### **RECORDS AND REPORTS**

**Records to be Kept:** The bidder will keep such records as are necessary to determine compliance with its minority business enterprise utilization obligations. These records to be kept by the bidder will be designed to indicate:

- a. ~~The actual minority and non-minority contractors, type of work being performed and actual values of work, services and procurement.~~
- b. Documentation of all correspondence, contacts, telephone calls, etc., to obtain services of minority business enterprises on this project.

**Quarterly Reports:** The bidder will submit reports on a quarterly basis of contracts and other business transactions executed with minority business enterprises. These reports will be submitted within the first week of the month following the end of the quarter. If the bidder cannot submit his/her report on time, he/she will notify the Representative and request additional time to submit the report. Failure of the bidder to report in a timely manner may result in a finding of noncompliance. Additional reports may be required by the County upon written request.

**Retaining Records:** All such records must be retained for 3 years following completion of the contract work and be available for inspection by the County.

## ADMINISTRATIVE PROCEDURES FOR ENFORCEMENT

**Investigation and Notification:** Whenever the County believes the bidder or any subcontractor may not be operating in compliance with the terms of these provisions, the County Representative will conduct an investigation. If the County Representative finds the bidder or any subcontractor not in compliance with these provisions, he/she will notify such contractors in writing of such steps as will, in the judgment of the County, bring such contractor into compliance.

**Report of Noncompliance:** If the contractor fails or refuses to perform fully such steps, the Representative will make a final report of noncompliance to the County for possible imposition of one or more of the sanctions listed below:

- a. Termination of the contract;
- b. Withholding a percentage of progress payment;
- c. Referral to the Office of the County Attorney for follow-up action;
- d. Denial to the contractor or any subcontractor of the right to participate in any future contracts awarded by the County;
- e. Other action, as appropriate, within the discretion of the County.

## DETERMINATION OF BID RESPONSIVENESS

**Request for Deviation:** If the bidder is unable to procure from minority business enterprises (by subcontract or otherwise), supplies and services, any combined value of which equals the appropriate percent of the total value of the contract, he/she will request, in writing, a deviation from goal requirements. This request will be reviewed by the BC MBE Officer. To obtain such a waiver, the bidder must submit the following information:

- a. A detailed statement of the efforts made to contact and negotiate with MBE's including: (1) the dates, names, addresses and telephone numbers of MBE's who were contacted; (2) a description of the information provided to MBE's regarding the work to be performed; and (3) a detailed statement of the reasons why additional prospective agreements with MBE's were not reached.
- b. A detailed statement of the efforts made to select portions of the work proposed to be performed by MBE's in order to increase the likelihood of achieving the goals.
- c. For each MBE contacted but considered not qualified, a detailed statement of the reasons for the bidder's conclusion.
- d. For each MBE contacted, but unavailable:
  - (1) A Minority Contractor Unavailability Certificate signed by the Minority Business Enterprise, or
  - (2) A statement from the bidder that the MBE refused to give such written certification after reasonable request.

**Penalties:** The apparent low bidder's failure to perform in providing a responsive MBE Program as required may result in rejection of the bid. Award may be made to the next lowest responsive, responsible bidder, or, at the County's option, the work may be resolicited.

**Cooperation in Reviews:** The bidder will cooperate with the County Representative in any reviews of the contractor's procedures and practices with respect to MBEs which the Representative may from time to time conduct.

**Approval Required for Changes:** During the life of the contract, all plans to modify the approved MBE participation program will require the approval of the County/BC MBE Officer. This includes any changes to the items of work to be sublet or materials and services to be obtained which differ from those considered in the original MBE participation program.

**False, Misleading or Misrepresenting Information:** If the documents used to determine the status of an MBE contain false, misleading or misrepresenting information, the matter may be referred to the Office of Law for appropriate action. In addition, when directed by the County, the Contractor will terminate, without liability to the County, its contract with a disqualified MBE and promptly submit for approval, the contractor's plans for maintaining the appropriate MBE participation on the project.

# MINORITY CONTRACTOR PROJECT DISCLOSURE AND PARTICIPATION STATEMENT

Baltimore County, Maryland  
 Minority Owned and Controlled  
 (If any item does not apply, please mark "N/A")

1. PRIME CONTRACTOR - (NAME AND COMPLETE ADDRESS)	2. SOLICITATION NUMBER:
	3. SOLICITATION TITLE:

4. MINORITY FIRM: (Check One) ☐ Individual ☐ Partnership ☐ Corporation ☐ Joint Venture

5. THE UNDERSIGNED MINORITY FIRM IS PREPARED TO PERFORM THE WORK/SERVICE HEREIN DESCRIBED IN CONNECTION WITH THE CONTRACT.

Item Number: \_\_\_\_\_ Work or Service: \_\_\_\_\_

Agreed Dollar Amount for Supplies/Service: \$ \_\_\_\_\_  
 Agreed Dollar Amount for Subcontracting: \$ \_\_\_\_\_

Contract Begin Date	Contract Completion Date

6. MINORITY FIRM'S SUPERVISION  
 STAFF TO INCLUDE FOREMEN

Name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Cell Ph No.: \_\_\_\_\_

Title: \_\_\_\_\_

7. PERCENTAGE OF WORK PERFORMED BY OTHER THAN OWN WORK FORCE: (Include Name and Address of Company)

Name \_\_\_\_\_ %  
 Address \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

8. STATE THE TERMS OF ANY ORAL OR WRITTEN AGREEMENT(S) OR UNDERSTANDING(S) WITH NON-MINORITY PERSONS OR FIRMS RELATING TO ASSISTANCE, FINANCIAL OR OTHERWISE, TO BE PROVIDED BY SAID PERSONS OR FIRMS.

THE UNDERSIGNED MINORITY FIRM WILL ENTER INTO A CONTRACT WITH \_\_\_\_\_

(INSERT PRIME CONTRACTOR)

FOR THE WORK/SERVICE INDICATED ABOVE UPON THE PRIME CONTRACTOR'S EXECUTION OF A CONTRACT WITH BALTIMORE COUNTY. THE UNDERSIGNED MINORITY FIRM HAS BEEN REVIEWED AND APPROVED BY THE STATE OF MARYLAND OR THE CITY OF BALTIMORE AS A MINORITY BUSINESS ENTERPRISE AS OF \_\_\_\_\_

(Date)

(Certification Number)

SIGNATURE - MINORITY FIRM

Print or Type Name of Firm

Street Address

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_ Date \_\_\_\_\_

Federal Employer Identification Number (FEIN):

I AGREE TO THE TERMS AND CONDITIONS STATED ABOVE

SIGNATURE - PRIME CONTRACTOR

Print or Type Name of Firm

Street Address

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_ Date \_\_\_\_\_

Federal Employer Identification Number (FEIN)

**MINORITY CONTRACTOR PROJECT DISCLOSURE AND PARTICIPATION STATEMENT**  
**Baltimore County, Maryland**  
**Woman Owned and Controlled**  
 (If any item does not apply, please mark "N/A")

1. PRIME CONTRACTOR - (NAME AND COMPLETE ADDRESS)

2. SOLICITATION NUMBER:

3. SOLICITATION TITLE:

4. MINORITY FIRM: (Check One) ☐ Individual ☐ Partnership ☐ Corporation ☐ Joint Venture

5. THE UNDERSIGNED MINORITY FIRM IS PREPARED TO PERFORM THE WORK/SERVICE HEREIN DESCRIBED IN CONNECTION WITH THE CONTRACT.

Item Number: \_\_\_\_\_ Work or Service: \_\_\_\_\_

Agreed Dollar Amount for Supplies/Service: \$ \_\_\_\_\_  
 Agreed Dollar Amount for Subcontracting: \$ \_\_\_\_\_

Contract Begin Date	Contract Completion Date

6. MINORITY FIRM'S SUPERVISION  
 STAFF TO INCLUDE FOREMEN

Name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Cell Ph No.: \_\_\_\_\_ Title: \_\_\_\_\_

7. PERCENTAGE OF WORK PERFORMED BY OTHER THAN OWN WORK FORCE: (Include Name and Address of Company)

Name \_\_\_\_\_ %  
 Address \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

8. STATE THE TERMS OF ANY ORAL OR WRITTEN AGREEMENT(S) OR UNDERSTANDING(S) WITH NON-MINORITY PERSONS OR FIRMS RELATING TO ASSISTANCE, FINANCIAL OR OTHERWISE, TO BE PROVIDED BY SAID PERSONS OR FIRMS.

THE UNDERSIGNED MINORITY FIRM WILL ENTER INTO A CONTRACT WITH \_\_\_\_\_  
 (INSERT PRIME CONTRACTOR)  
 FOR THE WORK/SERVICE INDICATED ABOVE UPON THE PRIME CONTRACTOR'S EXECUTION OF A CONTRACT WITH BALTIMORE COUNTY. THE UNDERSIGNED MINORITY FIRM HAS BEEN REVIEWED AND APPROVED BY THE STATE OF MARYLAND OR THE CITY OF BALTIMORE AS A MINORITY BUSINESS ENTERPRISE AS OF \_\_\_\_\_  
 (Date) (Certification Number)

SIGNATURE - MINORITY FIRM

Print or Type Name of Firm

Street Address

City State Zip Code Date

Federal Employer Identification Number (FEIN):

I AGREE TO THE TERMS AND CONDITIONS STATED ABOVE

SIGNATURE - PRIME CONTRACTOR

Print or Type Name of Firm

Street Address

City State Zip Code Date

Federal Employer Identification Number (FEIN)

# SCHEDULE FOR PARTICIPATION OF MINORITY BUSINESS ENTERPRISES

Baltimore County, Maryland  
 Minority Owned and Controlled  
 (If any item does not apply, please mark "N/A")

1. PRIME CONTRACTOR, NAME OF FIRM, ADDRESS (No., Street, City, State, Zip) TELEPHONE NO.

2. SOLICITATION TITLE

3. SOLICITATION NUMBER

4. \$ TOTAL CONTRACT DOLLAR AMOUNT

5. LIST THE DATA REQUESTED FOR EACH MINORITY IN FIRM, INVOLVED IN THIS CONTRACT:

a. MINORITY FIRM

(Name of Firm)	Percentage of Total Contract
(Address)	%
(City)	(State) (Zip)

Item No. and Description of work or service to be performed:

Contract Begin Date	Contract Completion Date
Agreed Dollar Amount for Supplies/Services: \$	Agreed Dollar Amount for Subcontracting: \$

b. MINORITY FIRM

(Name of Firm)	Percentage of Total Contract
(Address)	%
(City)	(State) (Zip)

Item No. and Description of work or service to be performed:

Contract Begin Date	Contract Completion Date
Agreed Dollar Amount for Supplies/Services: \$	Agreed Dollar Amount for Subcontracting: \$

c. MINORITY FIRM

(Name of Firm)	Percentage of Total Contract
(Address)	%
(City)	(State) (Zip)

Item No. and Description of work or service to be performed:

Contract Begin Date	Contract Completion Date
Agreed Dollar Amount for Supplies/Services: \$	Agreed Dollar Amount for Subcontracting: \$

6. MINORITY FIRMS TOTAL DOLLAR AMOUNT: \$

MINORITY FIRMS TOTAL PERCENTAGE: %

7. THIS FORM PREPARED BY:

Full Name	Title	Date
-----------	-------	------

DO NOT WRITE BELOW THIS LINE – BC USE ONLY

APPROVED: ☐ Yes ☐ No

DATE:

SIGNATURE – County Minority Business Enterprise Officer

**SCHEDULE FOR PARTICIPATION OF MINORITY BUSINESS ENTERPRISES**

**Baltimore County, Maryland  
Woman Owned and Controlled  
(If any item does not apply, please mark "N/A")**

1. PRIME CONTRACTOR, NAME OF FIRM, ADDRESS (No., Street, City, State, Zip) TELEPHONE NO.

2. SOLICITATION TITLE

3. SOLICITATION NUMBER 4. TOTAL CONTRACT DOLLAR AMOUNT \$

5. LIST THE DATA REQUESTED FOR EACH MINORITY IN FIRM , INVOLVED IN THIS CONTRACT:

a. MINORITY FIRM

(Name of Firm)	Percentage of Total Contract
(Address)	_____ %
(City) (State) (Zip)	

Item No. and Description of work or service to be performed:

Contract Begin Date	Contract Completion Date
Agreed Dollar Amount for Supplies/Services: \$	Agreed Dollar Amount for Subcontracting: \$

b. MINORITY FIRM

(Name of Firm)	Percentage of Total Contract
(Address)	_____ %
(City) (State) (Zip)	

Item No. and Description of work or service to be performed:

Contract Begin Date	Contract Completion Date
Agreed Dollar Amount for Supplies/Services: \$	Agreed Dollar Amount for Subcontracting: \$

c. MINORITY FIRM

(Name of Firm)	Percentage of Total Contract
(Address)	_____ %
(City) (State) (Zip)	

Item No. and Description of work or service to be performed:

Contract Begin Date	Contract Completion Date
Agreed Dollar Amount for Supplies/Services: \$	Agreed Dollar Amount for Subcontracting: \$

6. MINORITY FIRMS TOTAL DOLLAR AMOUNT: \$

MINORITY FIRMS TOTAL PERCENTAGE: %

7. THIS FORM PREPARED BY: Full Name Title Date

DO NOT WRITE BELOW THIS LINE – BC USE ONLY

APPROVED: ☐ Yes ☐ No

DATE: \_\_\_\_\_

SIGNATURE – County Minority Business Enterprise Officer

**MINORITY CONTRACTOR UNAVAILABILITY CERTIFICATE**  
**Baltimore County, Maryland**

1. IT IS HEREBY CERTIFIED THAT THE FIRM OF \_\_\_\_\_

(Name of Firm)

on \_\_\_\_\_

Street Address \_\_\_\_\_

City \_\_\_\_\_

State \_\_\_\_\_

Zip Code \_\_\_\_\_

Date \_\_\_\_\_

CONTACTED THE MINORITY BUSINESS ENTERPRISE \_\_\_\_\_

(Name of Minority Business)

IS SEEKING TO OBTAIN A BID

Street Address \_\_\_\_\_

City \_\_\_\_\_

State \_\_\_\_\_

Zip Code \_\_\_\_\_

FOR WORK/SERVICE IN RELATION TO SOLICITATION NUMBER \_\_\_\_\_

2. ITEM NUMBER AND DESCRIPTION OF WORK/SERVICE REQUESTED:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. FORM OF BID SOUGHT:

TO THE BEST OF MY KNOWLEDGE AND BELIEF, SAID MINORITY BUSINESS ENTERPRISE IS  
EITHER UNAVAILABLE FOR THE WORK/SERVICE IN RELATION TO SOLICITATION NUMBER  
\_\_\_\_\_ OR IS UNABLE TO PREPARE A BID FOR THE FOLLOWING REASON(S):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Name: First \_\_\_\_\_

Middle \_\_\_\_\_

Last \_\_\_\_\_

Title: \_\_\_\_\_

Street Address \_\_\_\_\_

City \_\_\_\_\_

State \_\_\_\_\_

Zip Code \_\_\_\_\_

Signature \_\_\_\_\_

4. IT IS HEREBY CERTIFIED THAT THE FIRM OF \_\_\_\_\_

Name of Minority Firm

Street Address \_\_\_\_\_

City \_\_\_\_\_

State \_\_\_\_\_

Zip Code \_\_\_\_\_

was offered an opportunity to bid on solicitation number \_\_\_\_\_

on \_\_\_\_\_

(Date)

by \_\_\_\_\_

(Name)

(Title)

(Firm Name)

the above statement is a true and accurate account of why the firm of \_\_\_\_\_

(Name of Minority Firm)

did not submit a bid.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

## **BID REPLY LABEL**

**CUT ON THE DOTTED LINE AND  
SECURE TO THE OUTSIDE OF YOUR  
RESPONSE ENVELOPE OR CARTON.**

<b>REQUEST FOR PROPOSAL</b>	
NO. P-017 10/02/09, 2:00 PM TERM CONTRACT FOR ELECTRIC POWER PURCHASE	
<b>TO:</b>	BALTIMORE COUNTY, MARYLAND PURCHASING BUREAU 400 WASHINGTON AVE, ROOM 148 TOWSON, MARYLAND 21204-4665

**BE SURE TO SEPARATE THE PRICE PROPOSALS FROM THE TECHNICAL PROPOSALS. PRICE AND TECHNICAL PROPOSALS MUST BE BOUND SEPARATELY SO THAT EVALUATORS CAN REVIEW THE TECHNICAL PROPOSALS WITHOUT KNOWLEDGE OF THE PRICE PROPOSALS.**

**PLEASE USE THE LABELS BELOW TO CLEARLY MARK THE OUTSIDE OF BOTH THE TECHNICAL PROPOSALS AND PRICE PROPOSALS WITHIN YOUR ENVELOPE OR CARTON.**

**TECHNICAL PROPOSAL**

**PRICE PROPOSAL**



**BALTIMORE REGIONAL COOPERATIVE PURCHASING COMMITTEE  
REQUEST FOR PROPOSAL NO. P-017  
TERM CONTRACT FOR ELECTRIC POWER PURCHASE**

**GENERAL CONDITIONS**

**1. BACKGROUND**

- 1.1 The Baltimore Regional Cooperative Purchasing Committee (BRCPC) is a purchasing consortium consisting of county and local government jurisdictions in the Central Maryland region. In existence since 1968, BRCPC has purchased electricity cooperatively since deregulation of the Maryland power market began. From 2000 through 2005, purchases have consisted of full requirements fixed rate pricing through a traditional government public bid process.

In June, 2006, BRCPC instituted a new strategy based on purchasing electricity on an hourly (Locational Marginal Price ~~+~~LMP) and fixed rate block purchasing structure. Energy price risk has been managed in conjunction with an approved risk management policy. To implement the new strategy, BRCPC contracted with a Maryland licensed Electric Supply Service Provider to enable it to access the hourly and fixed rate block markets.

- 1.2 BRCPC engaged the services of South River Consulting (SRC), an independent energy advisory consultant to assist in developing and executing the new strategy, to provide ongoing risk management and measurement, and to provide energy budgeting.
- 1.3 Since its inception in 2006, the new strategy has achieved great success for the participating BRCPC jurisdictions yielding over \$ 20 million in savings over traditional public procurement method. However, in June 2007, the Federal Energy Regulatory Commission (FERC) issued a new pricing structure for capacity purchases by regional transmission organizations' members. This new pricing structure has severely escalated capacity costs for BRCPC. As a result, BRCPC, with the assistance of SRC, developed a new procurement strategy for long term block purchases in order to encourage the construction of new power generation facilities in the Baltimore Gas and Electric/PEPCO zones of the PJM electric power grid system.

**2. SCOPE**

- 2.1 The purpose of this procurement is to solicit offers from qualified developers of generation facilities ("Contractors") in order to select one or more of these Contractors to supply BRCPC with long term blocks of electric power to enable BRCPC to execute its new electric procurement strategy for long term hedging. ~~An electric purchase and supply agreement will be executed between each Contractor and each of the BRCPC participating jurisdictions.~~ The maximum long term block of electric power to be purchased by BRCPC collectively from each Contractor is 25MW round the clock. BRCPC shall only purchase electric power if and when the Contractor produces the power. The purpose of this power purchase term contract is to buy power, not to fund the capitalization of the power generation facilities.

2.2 The following jurisdictions are participating in this procurement as members of the BRCPD purchasing consortium. Each jurisdiction will be contracting with the successful offeror separately as a result of the award of contract by Baltimore County Purchasing Bureau, the lead jurisdiction.

- Anne Arundel County Government
- Anne Arundel County Community College
- Baltimore City Government
- Baltimore County Government
- Baltimore County Revenue Authority
- Baltimore County Libraries
- Community College of Baltimore County
- Baltimore County Public Schools
- City of Annapolis
- Carroll County Government
- City of Bowie
- Harford County Government
- Harford County Public Schools
- Harford County Community College
- Howard County Government
- Howard County Community College
- Baltimore Museum of Art
- Baltimore City Public Schools
- City of Aberdeen
- Walters Art Museum
- Baltimore City Housing Authority
- Anne Arundel County Public Schools

2.3 The Contractor's generation facility may be fueled by fossil fuels or any of the approved State of Maryland Tier I or Tier II green power sources including but not limited to wind, solar, landfill gas, hydroelectric, geothermal, biomass gases, and waste to energy.

2.4 Each Contractor shall provide electric power up to 25MW round the clock for a ten-year term. Each Contractor shall also provide all rights to the capacity and renewable energy credits.

2.5 Each Contractor's new generation facilities must have been located in the Baltimore Gas and Electric/PEPCO zones. Each Contractor must have site control, a viable development plan to support the contract time frame and no incumbent ownership or control of power generation. The contract timeframe milestones for development and construction of the new generation facilities are as follows.

---

2.4.1 Securing permits: 18 months

2.4.2 Finding fuel supply necessary to support the generation facilities for the entire length of the contract including all renewals : 30 months

2.4.3 Establishment of funding for the new facilities: 12 months

2.4.4 Construction phase (contracting process, ground breaking, construction, start-up of facilities): 18 months

- 2.4.5 The entire timeframe shall not exceed 48 months; Section 2.4.2 shall parallel the other timeframes.
- 2.6 Each Contractor must maintain sufficient investment grade credit or collateral to fund, develop, construct, and operate the new generation facilities. The sales transaction for the electric power supplied to BRCPC must be conducted with BRCPC's current Maryland licensed Electric Supply Service Provider who has established a PJM sub account for all the BRCPC electric accounts.
- 2.7 Each Contractor must meet each contract timeframe milestones listed in Section 2.4. Failure to meet any milestone may be sufficient grounds for all the participating BRCPC jurisdictions to collectively terminate the contract. BRCPC reserves the right to approve extensions to any milestone.

### 3. PROPOSAL REQUIREMENTS

- 3.1 Each Offeror's proposal must include the following:
  - 3.1.1 Statement of compliance with scope/structure or alternatives.
  - 3.1.2 Statement of product and market experience
  - 3.1.3 Financial
    - 3.1.4.1 Financial statements (most recent 3 years)
    - 3.1.4.2 Corporate structure
    - 3.1.4.3 Guaranty and or surety
  - 3.1.4 Customer references (5)
  - 3.1.5 Business plan for construction and development of generation facility
    - 3.1.5.1 Type and capacity of generation
    - 3.1.5.2 Funding plan and marketing strategy
    - 3.1.5.3 Construction and development time line and schedule
    - 3.1.5.4 Plan for PJM Membership in good standing, Maryland Supplier License, and EDI qualification with BGE
    - 3.1.5.5 Economic development footprint and the impact of reusing the site
  - 3.1.6 MBE / WBE business utilization plan.
  - 3.1.7 Electric power purchase price (Submit price sheet in separate sealed price proposal envelope.)

- 3.2 An electronic file of all current BRCPC electricity accounts can be accessed by emailing Noel Chesser, South River Consulting, at [noel-chesser@sriverconsulting.com](mailto:noel-chesser@sriverconsulting.com).

4. **PROCUREMENT SCHEDULE**

- |      |                                      |   |  |
|------|--------------------------------------|---|--|
| 4.1  | August 11, 2009                      | - | RFP advertised on Baltimore County web site.       |
| 4.2  | August 18, 2009                      | - | Pre-Proposal Conference.                           |
| 4.3  | August 31, 2009                      | - | Solicitation Amendment issued (if needed).         |
| 4.4  | October 2, 2009                      | - | Proposals Opened.                                  |
| 4.5  | October 13, 2009                     | - | Evaluation Committee meets to short list Offerors. |
| 4.6  | October 26, 2009 – November 13, 2009 | - | Oral Discussions.                                  |
| 4.7  | November 20, 2009                    | - | Contractor Selected.                               |
| 4.8  | November 23, 2009 – December 4, 2009 | - | Contract documents drafted and approved.           |
| 4.9  | December 8, 2009 – January 31, 2010  | - | Contract documents executed and Contract awarded.  |
| 4.10 | February 1, 2010                     | - | Contract Start-Up.                                 |

5. **TERM OF AGREEMENT.** The term of this contract shall be for ten (10) years from the date that the Contractor's generation facilities are fully operational and producing electric power.

6. **PRE-PROPOSAL CONFERENCE.** A pre-proposal conference is scheduled for Tuesday, August 18, 2009 at 1:30 p.m., at the Baltimore Metropolitan Council, 2700 Lighthouse Point East, Suite 310, Baltimore, Maryland 21224-4774.

7. **QUESTIONS AND INQUIRIES; ADDENDA.**

- 7.1 Questions will be entertained at the conference. If it becomes necessary to revise any part of this RFP, addenda will be posted on the web site at [www.baltimorecountyonline.info/purchasing](http://www.baltimorecountyonline.info/purchasing).

- 7.2 Offerors must acknowledge, in writing, receipt of all addenda in the text of their proposals. All official correspondence in regard to the specifications should be directed to and will be issued by the Purchasing Bureau. Offerors are cautioned that the County assumes no responsibility for oral explanations or interpretations of solicitation documents.

- 7.3 The deadline for written questions pertaining to this solicitation is seven (7) working days prior to the due date of proposals.

8. **EVALUATION OF OFFERS.** Award will be made to the responsible Offeror whose proposal best meets the needs of the County as set forth herein.

8.1 Proposals will be evaluated based on the following criteria, listed in order of importance.

8.1.1 Experience with power generation and compliance with scope

8.1.2 Financial stability, credit/security.

8.1.3 Economic development footprint and site impact

8.1.4 Incorporation of green power

8.1.5 Minority enterprise business utilization

8.1.6 Electric power price (price proposal page)

8.2 After consideration of the factors set forth in this RFP, the committee will recommend award to the Offeror whose proposal is most advantageous to the County.

8.3 This RFP will result in the submission of "proposals" (not "bids"), and the evaluation and award process will be based on both scored technical and price responses, not just price. Therefore, the County may enter into negotiations with Offerors and invite "best and final offers" as deemed to be in the best interest of the County. Negotiations may be in the form of face-to-face, telephone, facsimile or written communications, or any combination thereof, at the County's sole discretion.

8.4 Offerors are strongly advised not to prepare their proposal submissions based on any assumption or understanding that negotiations will take place. Offerors are advised to respond to this RFP fully and with forth-rightness at the time of proposal submission.

8.5 Non-acceptance of an individual offer may mean that one or more other proposals were more advantageous, or that all were rejected.

9. **ORAL PRESENTATION.** Offerors may be required to clarify their proposals by making individual presentations to the evaluation committee.

10. **CONTRACTOR QUALIFICATIONS.**

10.1 At the option of the County, Offerors may be required to furnish evidence of sufficient financial responsibility to fulfill this contract, and evidence that they have, or can obtain the necessary equipment, manpower, and storage facility to ensure delivery within the parameters of this contract.

10.2 Offerors must provide at least five (5) references (names of contact persons and phone numbers) of similar sized contracts serviced during the past ten (10) years.

10.3 Prior to award of this contract, the County reserves the right to inspect the facilities of any responsive Offeror. The reputation of bidders regarding adequacy of their resources and facilities, and past records of their skillful performance of work of the type and magnitude required herein shall be considered when making the award.

11. **SUBMITTAL PROCESS AND REQUIRED COPIES.** Each Offeror shall submit one original, clearly marked as such, and nine (9) copies of the complete proposal. The cost of preparing proposals is the responsibility of Offerors. The County will not photocopy your proposal documents for the purpose of complying with this provision requiring a pre-determined number of duplicate copies. Failure to provide the required number of complete duplicate copies may result in rejection of your proposal.
- 11.1 Proposals must be securely sealed and addressed to the Baltimore County Purchasing Bureau, 400 Washington Avenue, Room 148, Towson, Maryland 21204 using the label provided in the solicitation package. Copies of the label must be made for multiple packages.
- 11.2 Technical and price proposals are to be mailed together in one package, but the Technical and Price Proposals must be bound separately. There shall be no reference to the price of products and services in the Technical Proposal. Proposals may be either mailed or hand-delivered. If the proposal is sent by mail or commercial express service, the Offeror shall be responsible for actual delivery of the proposal to the proper County office before the deadline. All timely proposals become the property of the County.
- 11.3 Late proposals will not be considered. Proposals received after the deadline will be returned unopened.
- 11.4 Proposals should be prepared simply and economically, providing a straightforward, concise description of the offer, and all required information. They should be printed on recycled paper and duplexed if possible; staples, clips or rubber bands are preferred to ring binders, and unnecessarily elaborate brochures or other expensive visual presentations are neither necessary nor desired. Each page of the proposal should be consecutively numbered.
- 11.5 Each proposal shall be accompanied by an executed procurement affidavit which is provided by the Purchasing Bureau in the solicitation package.
12. **FUNDING OUT.** If funds are not appropriated or otherwise made available to support contract continuation in any fiscal year, each entity shall have the right to terminate the contract without any obligation or penalty.
13. **COOPERATIVE PURCHASE**
- 13.1 The County reserves the right to extend all of the terms, conditions, specifications, and unit or other prices of any contract resulting from this bid to any and all public bodies, subdivisions, school districts, community colleges, colleges, and universities including non-public schools. This is conditioned upon mutual agreement of all parties pursuant to special requirements which may be appended thereto. The supplier/contractor agrees to notify the issuing body of those entities that wish to use any contract resulting from this bid and will also provide usage information, which may be requested.
- 13.2 The County assumes no authority, liability or obligation, on behalf of any other public or non-public entity that may use any contract resulting from this bid. All purchases and payment transactions will be made directly between the contractor and the requesting entity. Any exceptions to this requirement must be specifically noted in the proposal response.

14. **MINORITY ENTERPRISE BUSINESS UTILIZATION.** The Contractor shall utilize its best efforts to involve certified Minority Owned Business Enterprises and Women Owned Business Enterprises in its performance of this Agreement. Prior to contract award, the successful Offeror shall develop and deliver a plan to achieve such involvement, which shall be in effect throughout the term of this contract. The Contractor shall not be required to meet any numerical participation goals set pursuant to the MBE/WBE Program, since the establishment of any such goals is inappropriate at this stage of the development of the competitive electricity supply industry. Nevertheless, the Contractor shall utilize its best efforts to advance the interests of minority and women-owned businesses in the competitive electricity supply industry in general and in its organization in particular, through mentoring programs and subcontracts with minority and women-owned businesses.

BALTIMORE REGIONAL COOPERATIVE PURCHASING COMMITTEE  
REQUEST FOR PROPOSAL NO. P-017  
TERM CONTRACT FOR ELECTRIC POWER PURCHASE  
Due Date: 10/02/09, Time: 2:00 P.M.

BID SIGNATURE COVER PAGE

SUBMISSION OF A BID/PROPOSAL IN RESPONSE TO THIS SOLICITATION EVIDENCES THE BIDDER'S ACCEPTANCE OF THE TERMS AND CONDITIONS THEREIN. THIS PAGE MUST BE PROPERLY SIGNED BY THE INDIVIDUAL PROPOSAL OFFEROR OR BY AUTHORIZED OFFICIAL IN THE FIRM ACKNOWLEDGING AND ACCEPTING ALL TERMS AND CONDITIONS OF THE REQUEST FOR PROPOSAL.

COMPANY NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

\_\_\_\_\_  
(City)

\_\_\_\_\_  
(State)

\_\_\_\_\_  
(Zip Code)

TELEPHONE: \_\_\_\_\_ FAX: \_\_\_\_\_

SIGNED: \_\_\_\_\_ DATE: \_\_\_\_\_

PRINT NAME: \_\_\_\_\_ TITLE: \_\_\_\_\_

TAX ID NUMBER (FIN/SS#) \_\_\_\_\_ EMAIL: \_\_\_\_\_

THE PERSON SIGNING THE BID/PROPOSAL MUST INITIAL ANY ALTERATIONS IN FIGURES ON THIS FORM IN INK.

\_\_\_\_\_ We wish to submit a "NO BID" at this time, but request that our company remain on your bidders list for this commodity/service.

\_\_\_\_\_ We do not offer this commodity/service; please delete our company from future bid lists for this commodity/service.

Is your company a certified Minority Business Enterprise either by the Maryland Department of Transportation (MDOT) or the City of Baltimore? \_\_\_\_\_ No \_\_\_\_\_ Yes

If yes, indicate your certification number: \_\_\_\_\_

Payment Terms: \_\_\_\_\_ Cash discounts for less than 30 days will not be considered in determining awards. However, should that bidder obtain award by consideration of the gross price, the County should make every effort to obtain the discount. The County will not accept payment terms with a period of less than (30) days.

Delivery shall be made within \_\_\_\_\_ calendar days after receipt of order.

F.O.B. Destination (unless otherwise stated herein).

If your firm is not already receiving email notification of new solicitations and amendments, you may register for email notification on the County's web site at [www.baltimorecountyonline.info/purchasing](http://www.baltimorecountyonline.info/purchasing).



**BALTIMORE REGIONAL COOPERATIVE PURCHASING COMMITTEE  
REQUEST FOR PROPOSAL NO. P-017  
TERM CONTRACT FOR ELECTRIC POWER PURCHASE  
Due Date: 10/02/09, Time: 2:00 P.M.**

PRICE SHEET PAGE 1 OF 1		REQUEST FOR PROPOSAL	
LINE NO.	COMMODITY/SERVICE DESCRIPTION	UNIT	UNIT PRICE
1	<p>COMMODITY CODE: 961-85</p> <p>Electric Power Purchase, 25MW, Round The Clock, as per specifications.</p>	MWh	\$ _____

**GRAND TOTAL**      \$ \_\_\_\_\_

**COMPANY NAME:** \_\_\_\_\_

FED ID OR SOCIAL SECURITY NO. \_\_\_\_\_

## CONTRACT

THIS AGREEMENT made this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_ (the "Agreement") is by and between [BRCPC Entity, Maryland], a body corporate and politic, (hereinafter "Entity") and [NAME AND ADDRESS OF CONTRACTOR] (hereinafter the "Contractor").

WHEREAS, the Entity is a governmental entity, involved with numerous other governmental entities, in the cooperative purchasing committee of the Baltimore Metropolitan Council, Inc. (each entity including the Entity is a "Participating Entity", and all entities, collectively, are the "Participating Entities") constituting the Baltimore Regional Cooperative Purchasing Committee ("BRCPC"); and

WHEREAS, the said Contractor, hereby covenants and agreement to perform all services and deliver all goods, in strict and entire conformity with the Attached A entitled, "Services to be Performed/Goods To Be Provided", and the Request for Proposal Bid No. \_\_\_\_\_, as amended, and the Contractor's response thereto dated \_\_\_\_\_ (collectively, the "Bid").

WHEREAS, the objective of the BRCPC is for one government entity, this instance Baltimore County, to issue a solicitation for a particular procurement matter, the specifications of which represent the needs of all Participating Entities. Each Participating Entity enters into its own individual contract with the successful bidder and in this instance the Contractor.

WHEREAS, This cooperative and collective solicitation process seeks to lower administrative costs of Participating Entities by avoiding duplication of effort, obtain better prices through economies of scale, and exchange information and expertise. This effort, known as cooperative purchasing, has further benefits of encouraging product improvement and standardization, promoting exchange of technical information and management techniques, providing a forum for common problem solving and promoting the use of best practices in regional public procurement.

WHEREAS, each such individual contract represents an independent contract between that Participating Entity and the Contractor, and therefore, any contract action by one Participating Entity, including, but not limited to, termination for cause or convenience, shall not bind or create any legal obligation, duty or responsibility of any kind or extent to BRCPC or any other Participating Entity.

~~NOW THEREFORE, in consideration of the mutual promises and covenants set forth herein, the parties hereto agree as follows:~~

### 1. Contractor's Duties.

1.1 The Contractor, in consideration of the payments hereinafter specified and agreed to be made by the Entity, hereby covenants and agrees to perform all services and provide all goods, in strict and entire conformity with the Attachment A entitled, "Services to be Performed/Goods to be Provided", the Request for Proposal Bid No. \_\_\_\_\_, as amended, and the Contractor's response thereto

dated \_\_\_\_\_, 2009 (collectively, the "Bid") attached hereto and incorporated herein by reference.

1.2 The Contractor shall be an independent Contractor and not an employee of the Entity, and shall be responsible for the reporting and remittance of all state and federal taxes of any kind or nature. The Contractor shall provide the services and goods, as applicable, with due care and in a manner satisfactory to the Entity, and in accordance with all applicable professional standards, laws, regulations and the Bid.

1.3 Notwithstanding any other terms or provisions of this Agreement, in the event the Entity is temporarily or permanently prevented, restricted or delayed in the performance of any or all of the duties and obligations imposed upon or assumed by it hereunder, by act of the General Assembly of Maryland or the Entity's legislative authority, by a court of competent jurisdiction or by administrative delay not due to the fault of the Entity (and its officials, employees or agents) shall not be liable directly or indirectly for any claims, losses, costs, or expenses caused to or suffered by the Contractor or any other person in connection with this Agreement or as a result of such prevention, restriction or delay.

## 2. Compensation.

2.1 In consideration of the services to be performed and goods to be provided by the Contractor, the Contractor shall be paid in accordance with the unit price for Line #00001 of the price sheet as set forth in the Bid.

2.2 The Contractor shall submit invoices to the Entity monthly for the services performed and the goods provided for the Entity during the prior month. The Contractor's invoices shall reflect the following:

- Contractor's name
- Address
- Federal tax identification number
- Order number and line number(s) that correspond with resulting orders
- Services performed and goods provided during the preceding billing period

Original invoices shall be submitted to [INSERT ENTITY'S DISBURSEMENT ADDRESS]. Invoices in the proper form and approved by the Entity shall be paid by the Entity within thirty (30) days of receipt thereof. The Entity reserves the right to approve such invoices, in its sole discretion, and to request such detail and additional information as the Entity, in its discretion deems appropriate.

2.3 In no event shall the compensation paid to the Contractor exceed the sum of the Entity's approved appropriation for this Agreement in any contract year or term hereof. If any portion of any term of this Agreement extends beyond the Entity's then-current fiscal year, this Agreement is subject to availability and appropriation of funds for that portion of the term that extends beyond the Entity's then-current fiscal year.

2.4 Except as may be mutually agreed upon by the parties hereto in writing, the Contractor shall be entitled to no fees, bonuses, contingent payments, or any other amount in connection with the services rendered or to be rendered or goods provided or to be provided hereunder. The parties

hereto further agree that the Entity shall have no obligation to reimburse, pay directly, or otherwise satisfy, any losses, costs or expenses of the Contractor in connection with the performance of its obligations under this Agreement, including, but not limited to, the loss, cost and/or expense of any insurance, license fees, hedging security, or hedging-related items.

3. Term.

3.1 This Agreement shall be effective when executed by the Entity and the Contractor and shall continue through one (1) year thereafter (hereinafter defined as the "Initial Term") at which time the Entity may exercise its option to renew as set forth in Section 3.2 below, unless the Agreement is terminated pursuant to Article 5 hereof.

3.2 The Entity reserves the sole right to renew this Agreement for \_\_\_\_\_ years, in one-year increments, (each a "Renewal Term") on the same terms and conditions set forth herein. The Entity will automatically renew this Agreement at the end of the Initial Term and each Renewal Term (except for the last) unless it provides written notice of non-renewal to the Contractor prior to the end of the then-current term. Unless set forth in a written amendment, the compensation and manner of payment set forth in Paragraph 2 shall remain unchanged.

4. Contractor's Representations and Warranties. The Contractor hereby represents the following

4.1 The Contractor is a [limited partnership] [general partnership] [corporation] [limited liability company], duly formed and validly existing under the laws of the State of \_\_\_\_\_, and is qualified to do business and is in good standing in the State of Maryland.

4.2 The Contractor has the power and authority to consummate the obligations and responsibilities contemplated hereby and has taken all necessary action to authorize the execution of this Agreement and the delivery and performance required under this Agreement.

4.3 The Contractor and the person executing this Agreement for the Contractor warrants that he is duly and legally authorized by the Contractor to execute this Agreement on the Contractor's behalf.

4.4 The services and goods to be provided under this Agreement shall be performed and provided competently and with due care, and in accordance with all applicable laws, codes, ordinances, regulations, executive orders and licensing requirements. The parties understand and agree that this Agreement may be for the provision of a combination of goods and services. In such case, the parties hereby agree that the warranties of merchantability and fitness for a particular purpose and use shall apply to the portion of this Agreement that is pertaining to or for goods. The parties understand and agree that County shall rely upon all express warranties contained in this Agreement, including but not limited to the Bid, and any sample or model presented by Contractor and expressly accepted by the County. All goods to be delivered shall comply with the implied warranties of merchantability, fitness for particular purpose and use and warranties of title and against infringement, and all express warranties contained in this Agreement, including but not limited to the Bid.

4.5 The Contractor has obtained and shall continue to maintain, at its own cost, such licenses and certifications as are necessary to perform the services and provide the goods under this Agreement, and shall present such licenses and certifications to the Entity upon its request for the same.

4.6 The financial condition of the Contractor shall be satisfactory to the Entity and if requested, the Contractor shall have delivered to Entity such written statements, schedules or reports in such form, containing such information and accompanied by such documents as may be satisfactory to the Entity concerning the financial condition of the Contractor. Such documentation shall fairly and accurately present the financial condition of the Contractor as of their date and the results of its operations for the period then ended. There has been no material adverse change in the financial condition of the Contractor or the results of its operations since the date of such financial statements.

4.7 All representations and warranties made in the Procurement Affidavit, the Contract Affidavit (Attachment B, attached hereto and incorporated herein) and the Bid remain true and correct in all respects.

## **5. Termination.**

### **5.1 Termination for Convenience.**

5.1.1 The Entity may terminate this Agreement, in whole or in part, without cause, by providing written notice thereof to the Contractor at least thirty (30) days prior to the intended date of termination at the address set forth below or at such other address as may be later designated by the Contractor in writing. The Contractor acknowledges that the absence of a reciprocal right of termination for convenience does not render this Agreement illusory or unenforceable.

5.1.2 In the event of termination, without cause, the Contractor shall be paid for all reasonable costs incurred by the Contractor up to the date of termination set forth in the written notice of termination. Payment shall be made in accordance with the provisions of Paragraph 2 of this Agreement.

### **5.2 Termination for Default.**

5.2.1 The Entity may terminate this Agreement, for default, as set forth in Article 7 hereof, by providing written notice thereof to the Contractor at least seven (7) days prior to the intended date of termination at the address set forth in Article 26 of this Agreement, or at such other address as may be later designated by the Contractor in writing in accordance with Article 26 of this Agreement.

5.2.2 In the event of termination for default, the Entity shall have the rights and remedies hereinafter set forth.

### **5.3 Termination for Non-Appropriation of Funds.**

5.3.1 The failure of the Entity to appropriate sufficient funds in any fiscal year or term of this Agreement to provide funds for this Agreement shall entitle the Entity to terminate this Agreement without prior notice to the Contractor. This termination shall be immediate and the Contractor shall be paid for all reasonable costs incurred by the Contractor up to the date of termination set forth in

the written notice of termination. Payment shall be made in accordance with the provisions of Paragraph 2 of this Agreement.

6. Insurance.

The Contractor shall be required to procure and maintain the insurance required by the Entity pursuant to the attached insurance requirements in Attachment C, attached hereto and incorporated herein, in the form and in amounts acceptable to the Entity throughout the term of this Agreement. The Contractor shall provide evidence of the required insurance coverages to the Entity while this Agreement is in force in a form satisfactory to the Entity. Such documentation may, in the discretion of the Entity, be in the form of binders, or declarations, or policies from the insurance company. In the event of a conflict between the provisions of the attached insurance requirements and this Agreement, the provisions of this Agreement shall prevail.

7. Default. The term "Default" as used in this Agreement shall mean the occurrence or happening, from time to time, of any one or more of the following:

7.1 Representations and Warranties. If any representation or warranty, expressed or implied, contained in this Agreement, and if applicable, the Bid shall prove at any time to be incorrect or misleading in any material respect either on the date when made or on the date when reaffirmed or at any time throughout the term of this Agreement.

7.2 Compliance with Covenants and Conditions. If the Contractor shall fail to comply with the terms of any covenant, condition, agreement or any express or implied warranty related to this Agreement.

7.3 Performance of Contractual Obligations. If the services performed and the goods provided hereunder are not performed and provided in good faith and in accordance with the provisions of this Agreement.

7.4 Conditions Precedent to Any Disbursement. If the Contractor shall be unable to satisfy any condition precedent to its right to receive a disbursement.

7.5 Bankruptcy. If the Contractor becomes insolvent or generally does not pay its debts as they become due, or if a petition for relief is filed by the Contractor in a bankruptcy court, or if the Contractor applies for, consents to, or acquiesces in the appointment of a trustee, custodian, or receiver for the Contractor or any of its assets and property, or makes a general assignment for the benefit of creditors; or in the absence of such application, consent, or acquiescence, a trustee, custodian, or receiver is appointed for the Contractor or for a substantial part of the assets and property of the Contractor and is not discharged within thirty (30) days; or any bankruptcy, reorganization, debt arrangement, or other proceeding or case under any bankruptcy or insolvency or any dissolution or liquidation proceeding is instituted against the Contractor and is consented to or acquiesced in by the Contractor or remains for sixty (60) days un-dismissed; or the Contractor takes any of the actions described in this subsection.

8. Remedies for Default

8.1 The Entity shall have the right upon the happening of any Default, without providing notice to the Contractor:

- a. In addition to other available rights and remedies, to terminate this Agreement immediately, in whole or in part;
- b. To suspend the Contractor's authority to receive any undisbursed funds; and/or
- c. To proceed at any time or from time to time to protect and enforce all rights and remedies available to the Entity, by suit or any other appropriate proceedings, whether for specific performance of any covenant, term or condition set forth in this Agreement, or for damages or other relief, or proceed to take any action authorized or permitted under applicable law or regulations.

8.2 Upon termination of this Agreement for default, the Entity may elect to pay the Contractor for services provided up to the date of termination, less the amount of damages caused by the default, all as determined by the Entity in its sole discretion. If the damages exceed the undisbursed sums available for compensation, the Entity shall not be obligated to make any further disbursements hereunder.

9. Remedies Cumulative and Concurrent

No remedy herein conferred upon or reserved to the Entity is intended to be exclusive of any other remedies provided for in this Agreement, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or under this Agreement, or now or hereafter existing at law or in equity or by statute. Every right, power and remedy given to the Entity shall be concurrent and may be pursued separately, successively, or together against the Contractor, and every right, power and remedy given to the Entity may be exercised from time to time as often as may be deemed expedient by the Entity.

10. Confidential Information

The Contractor shall not disclose any documentation and information of any kind or nature disclosed to the Contractor in the course of its performance of duties hereunder without the express prior written consent of the Entity.

11. Conflict of Interest

The Contractor represents and warrants that there is no actual or potential conflict of interest between its performance under this Agreement and its engagement or involvement in any other personal or professional activities. In the event such conflict or potential conflict arises during the term of this Agreement, or any renewal hereof, the Contractor shall immediately advise the Entity in writing thereof.

12. Assignment

12.1 Neither the Entity nor the Contractor shall assign, sublet or transfer its interest or obligations under this Agreement to any third party, without the prior written consent of the other. The

Contractor further agrees to provide a minimum of ninety (90) days' written notice to the Entity prior to entering into any merger or consolidation where the surviving entity will be unwilling or unable to accept the Contractor's obligations hereunder, to enable the Entity to procure the goods and/or services elsewhere. In the event the cost of procuring such alternate goods and/or services increases the cost to the Entity, and/or delays delivery time of any product, in addition to any other remedies available to the Entity, the Contractor shall pay to the Entity, as damages, any and all additional costs and/or damages incurred.

12.2 Nothing in this Agreement shall be construed to create any personal or individual liability upon any employee, officer or official of the Entity, nor shall this Agreement be construed to create any rights or obligations for any person or entity other than the Contractor and the Entity.

13. Delegation of Duties.

The Contractor shall not delegate the Contractor's duties under this Agreement without the prior written consent of the Entity.

14. Indemnification.

14.1 The Contractor shall defend, indemnify and hold harmless the Entity, its employees, agents and officials from any and all liabilities, claims, suits, or demands including but not limited to attorneys' fees which may be made against the Entity, its employees, agents or officials resulting from any act or omission committed in the performance of the duties imposed by and performed under the terms of this Agreement by the Contractor or anyone under agreement with the Contractor to perform duties under this Agreement. The Contractor shall not be responsible for acts of gross negligence or willful misconduct committed by the Entity or its employees, agents or officials.

14.2 The Contractor shall also defend, indemnify and hold harmless the Entity, its employees, agents and officials from any and all liabilities, claims, suits, or demands including but not limited to attorneys' fees which may be made against the Entity, its employees, agents or officials by any third party arising from the alleged violation of any third party's trade secrets, proprietary information, trademark, copyright, patent rights, or intellectual property rights in connection with this Agreement.

14.3 Unless notified by the Entity in writing to the contrary the Contractor shall provide defense for Entity, its employees, agents and officials in accordance with this Article 14 and in doing so Contractor shall allow Entity to participate in said defense of Entity, its employees, agents and officials, to the extent and as may be required by the Entity and the Contractor shall cooperate with Entity in all aspects in connection therewith.

15. Integration and Modification.

This Agreement sets forth the entire agreement between the Contractor and the Entity relative to the subject matter hereof. No representation, promise or condition, whether oral or written, not incorporated herein shall be binding upon the Contractor and the Entity. No waiver, modification or amendment of the terms of this Agreement shall be effective unless made in writing and signed by an authorized representative(s) of the Contractor and the Entity.



16. Fee Prohibition.

The Contractor warrants and represents that it has not employed or engaged any person or entity to solicit or secure this Agreement, and that it has not paid, or agreed to pay any person or entity a fee or any other consideration contingent on the making of this Agreement. If any suit, claim, or demand shall arise concerning such a fee, the Contractor agrees to indemnify and hold harmless the Entity, its employees, agents, and officials from all such claims, suits or demands.

17. No Partnership.

Nothing contained in this Agreement shall be construed in any manner to create any relationship between the Contractor and the Entity other than expressly specified herein and the Contractor and the Entity shall not be considered partners or co-venturers for any purpose on account of this Agreement.

18. Governing Law.

This Agreement shall be governed and construed in accordance with the laws of the State of Maryland and the laws of the Entity, if applicable.

19. Recitals and Conflicting Terms.

19.1 The Recitals are hereby incorporated into this Agreement. The Contractor acknowledges that any purchase order or other ordering document issued on or after the effective date of this Agreement is also hereby integrated and made a part of this Agreement, provided, however that any preprinted terms and conditions of any purchase order or other ordering document issued by the Entity in connection with this Agreement that are in addition to or inconsistent with the terms and conditions of the Agreement, shall not be binding on the Contractor and shall not be deemed to modify this Agreement.

19.2 In the event of a conflict between the Bid and this Agreement, the provisions of this Agreement (without the conflicting terms in the Bid) shall prevail.

19.3 If a conflict arises between the provisions of this Agreement and any purchase order or other ordering document, the provisions of this Agreement shall prevail.

20. Severability.

If any of the provisions in this Agreement are declared by a court or other lawful authority to be unenforceable or invalid for any reason the remaining provisions hereof shall not be affected thereby and shall remain enforceable to the full extent permitted by law.

21. Time is of the Essence.

TIME IS OF THE ESSENCE WITH RESPECT TO PERFORMANCE OF THE TERMS AND CONDITIONS OF THIS AGREEMENT.

22. Counterparts.

This Agreement may be executed in any number of counterparts by the Contractor and the Entity hereto in separate counterparts, each of which when so executed and delivered shall be

deemed to be an original and all of which taken together shall constitute but one and the same instrument.

**23. Ownership of Goods.**

All finished or unfinished work, reports, or goods that are the subject of this Agreement including but not limited to any licenses or consents acquired by the Contractor for performance hereunder, shall be and shall remain the property of the Entity.

**24. Discrimination Prohibited.**

24.1 In the execution of the obligations and responsibilities hereunder, including, but not limited to, hiring or employment made possible by or relating to this Agreement, the Contractor shall not:

a. Fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to the individual's compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, age, national origin, marital status, sexual orientation, genetic information, or disability unrelated in nature and extent so as to reasonably preclude the performance of the employment, or because of the individual's refusal to submit to a genetic test or make available the results of a genetic test;

b. Limit, segregate, or classify its employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect the individual's status as an employee, because of the individual's race, color, religion, sex, age, national origin, marital status, sexual orientation, genetic information, or disability unrelated in nature and extent so as to reasonably preclude the performance of the employment, or because of the individual's refusal to submit to a genetic test or make available the results of a genetic test; or

c. Request or require genetic tests or genetic information as a condition for hiring or determining benefits.

24.2 All solicitations or advertisements for employees shall state that the Contractor is an equal opportunity employer.

**25. Reports / Information / Inspections / and Audits.**

25.1 At any time during normal business hours and as often as the Entity may deem necessary, the Contractor shall make available to and permit inspection and photocopying by the Entity, its employees or agents, all records, information and documentation of the Contractor related to the subject matter of this Agreement, including, but not limited to, all contracts, invoices, payroll, and financial audits.

25.2 The Entity may request the Contractor, at the expense of the Contractor, to have performed an independent audit of the Contractor's financial information including, but not limited to, balance sheets, statement of revenue and expenses, and receipts and disbursements. The independent auditor selected shall be subject to the approval of the Entity.

25.3 The Contractor shall provide monthly comprehensive reports of its activities and the status of its objectives to the person designated by the Entity to receive such reports. The Contractor

shall maintain, in a neat and orderly manner, all documents and records relating to work performed pursuant to this Agreement and shall, upon the request of the Entity, turn over to the Entity all information, data, documents, records, reports, drawings and the like, prepared in the course of work under this Agreement.

26. Notice.

Any notice required to be delivered shall be deemed to have been received when the notice has been sent by certified mail, return receipt, overnight carrier with receipt, or hand delivered with signed receipt to the following address or individual or at such other address and/or such other individual a party may identify in writing to the other party:

FOR THE ENTITY: [Contact Name and/or Job Title, address, telephone number and fax number]

FOR THE CONTRACTOR: [Contact Name and/or Job Title, address, telephone number and fax number]

27. Political Contribution Disclosure Affirmation.

The Contractor affirms that it is aware of, and will comply with, the provisions of Sections 14-101 through 14-108 of the Election Law Article of the Annotated Code of Maryland, as amended which requires that every person who makes during any 12-month period, one or more contracts, with one or more Maryland governmental entities involving cumulative consideration of at least \$100,000.00, shall file with the State Board of Elections certain specified information including but not limited to the disclosure of attributable political contributions in excess of \$500 during defined reporting periods.

28. No Waiver, Etc.

No failure or delay by the Entity to insist upon the strict performance of any term, condition or covenant of this Agreement, or to exercise any right, power, or remedy consequent upon a breach thereof, shall constitute a waiver of any such term, condition, or covenant or of any such breach, or preclude the Entity from exercising any such right, power, or remedy at any later time or times.

29. Survival.

Those sections of this Agreement which by their nature are intended to survive, including but not limited to, Articles 4 (Contractor's Representations and Warranties), 10 (Confidential Information), 14 (Indemnification), 23 (Ownership of Goods), and 25 (Reports/Information/and Audits) shall survive the expiration or earlier termination of this Agreement.

[Signatures on the following page]

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first written above.

WITNESS:

[INSERT LEGAL NAME OF CONTRACTOR]  
Federal Identification No. \_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_ (SEAL)  
[Insert Name]  
[Insert Title]

[Signatures continued on next page]

ENTITY'S SIGNATURE PAGE

**SAMPLE**

ATTACHMENT A

SERVICES TO BE PERFORMED/GOODS TO BE PROVIDED

THE ABOVE ARE IN ADDITION TO OBLIGATIONS AND DUTIES AS SET FORTH IN THE REQUEST FOR PROPOSAL NO \_\_\_\_\_ AND THE BID.

THE PARTIES ACKNOWLEDGE AND AGREE THAT THIS NOT A REQUIREMENTS CONTRACT AND THE ENTITY SHALL PROCURE FROM THE CONTRACTOR AS DEEMED APPROPRIATE IN THE ENTITIES SOLE DISCRETION.

**SAMPLE**

ATTACHMENT B  
CONTRACT AFFIDAVIT

A. AUTHORIZED REPRESENTATIVE

I HEREBY AFFIRM THAT:

I am the [title]\_\_\_\_\_ and the duly authorized representative of [business]\_\_\_\_\_  
(the "Business") and that I possess the legal authority  
to make this Affidavit on behalf of myself and the business for which I am acting.

B. BID/PROPOSAL AFFIDAVIT AFFIRMATIONS VALID

I FURTHER AFFIRM THAT:

To the best of my knowledge, information, and belief, each of the affirmations, certifications, or  
acknowledgments contained in that certain Procurement Affidavit dated \_\_\_\_\_, and  
executed by (me) \_\_\_\_\_ for the purpose of obtaining the contract to which this Affidavit  
is attached, remains true and correct in all respects as if made as of the date of this Contract Affidavit and  
as if fully set forth herein.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE  
CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE,  
INFORMATION AND BELIEF.

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name:

Title:

(Authorized Representative and Affiant)

ATTACHMENT C

[INSURANCE INFORMATION]

**SAMPLE**

**ATTACHMENT F**  
**CONTRACTOR'S RESPONSE TO RFP**



# **Steve Myer - Re: Fw: BRCPC RFP P-017 BRCPC response to April 27, 2010 Energy Answers' email**

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**From:** "Peter Ledig" <pjledig@swbell.net>  
**To:** "Steve Myer" <smyer@baltimorecountymd.gov>  
**Date:** 6/18/2010 9:00 AM  
**Subject:** Re: Fw: BRCPC RFP P-017 BRCPC response to April 27, 2010 Energy Answers' email  
**CC:** "Steve Ragiel" <sragiel@sbcglobal.net>

---

Hi Steve,

After thinking again about our conversation, I suggest the following changes to the previous email on this subject as it should simplify the objective for both parties while providing the same benefit.

1. Delete the "Planned Outage and Maintenance Schedule" section in Attachment B and replace it with a new section ... "Non-Delivery Days". The Power Purchase Agreement will provide that Seller may elect to designate up to 30 days in a calendar year as days in which Seller will not be required to deliver electricity to Buyer under such agreement, provided that no such day may be designated to occur during the month of June, July, August or September. Seller shall make such designation in respect of a particular calendar year by delivery to Buyer of written notice of the day or days so designated, such notice to be delivered to Buyer no later than the 60th day preceding the start of such calendar year.
2. Within the "Availability Guarantee" section in Attachment B, change clause (v) from Scheduled Outages to Non-Delivery Days.
3. Modify the Energy Delivery Point in Attachment B to "The high voltage busbar of the Pumphrey substation or the PJM BGE Zone. This energy delivery option is at the sole discretion of the Seller".

I apologize in advance if this creates any confusion but at the end of the day, it will make it easier for both parties to manage the agreement.

If you have any questions, please let me know.

All the best,

---

Peter

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— Original Message —

**From:** Peter Ledig  
**To:** Steve Myer  
**Cc:** Steve Ragiel  
**Sent:** Tuesday, June 15, 2010 2:16 PM  
**Subject:** Re: Fw: BRCPC RFP P-017 BRCPC response to April 27, 2010 Energy Answers' email

Hi Steve,

It was nice talking with you yesterday and I now have a better understanding of your question. Below in green is our revised language for the "Planned Outage and Maintenance Schedule" section. This language should now address the issue that you raised. We look forward to receiving favorable feedback from the Evaluation Committee by this Friday and proceeding to the contracting phase.

**Planned Outage and Maintenance Schedule:** The Project will be limited to 38 days per calendar year for Planned Maintenance. Annually, at least 90 days prior to the last day of each calendar year, Seller shall provide to Buyer a Planned Outage Schedule highlighting the Planned Maintenance Schedule for the Project for the following calendar year. Planned Maintenance shall include any scheduled outage of one or more boilers for repair, replacement, refurbishment or other maintenance activities which is included in such schedule or any amendment thereof. If the Project schedules its Planned Maintenance during the months of June, July, August and September, the Project will still deliver the 25 MW of energy contemplated by this Agreement to either the high voltage busbar of the Pumphrey substation or the PJM BGE Zone.

If you have any questions, please let me know.

All the best,

Peter

----- Original Message -----

From: Steve Myer

To: pjledig@swbell.net

Cc: sragiel@sbcglobal.net

Sent: Friday, June 11, 2010 7:24 AM

Subject: Re: Fw: BRCPC RFP P-017 BRCPC response to April 27, 2010 Energy Answers' email

Peter:

One clarification remains. With regards to your Scheduled Outages, will your firm agree that all scheduled outages must be pre-approved by PJM and during the winter months? Please respond by close of business Monday, June 14, 2010. Thank you.

---

>>> "Peter Ledig" <pjledig@swbell.net> 6/10/2010 12:22 PM >>>

Hi Steve,

Since the BRCPC meeting was on Tuesday, I'm just checking in on the status of our offer.

All the best,

Peter

----- Original Message -----

From: Peter Ledig

To: Steve Myer

Cc: Steve Ragiel

Sent: Monday, June 07, 2010 5:36 PM

Subject: Re: Fw: BRCPC RFP P-017 BRCPC response to April 27, 2010 Energy Answers' email

Hi Steve,

As a follow-up to my earlier email, the PSC will be granting the overall facility permit by the end of July in line with our project schedule expectations. The overall PSC permit may include a requirement to obtain a refuse facility permit, which if it is required, MDE has offered to expedite the permit for us. Please let me know if you have any more questions about the schedule.

Also, I look forward to hearing from you on Wednesday as we previously discussed.

All the best,

Peter

----- Original Message -----

From: Peter Ledig

To: Steve Myer

Cc: Steve Ragiel

Sent: Monday, June 07, 2010 3:00 PM

Subject: Re: Fw: BRCPC RFP P-017 BRCPC response to April 27, 2010 Energy Answers' email

Hi Steve,

Thanks for the note. All is well with the project and on schedule. I will provide you with a more detailed response to your questions later today.

All the best,

Peter

----- Original Message -----

From: Steve Myer

To: Peter Ledig

Sent: Monday, June 07, 2010 2:05 PM

Subject: Re: Fw: BRCPC RFP P-017 BRCPC response to April 27, 2010 Energy Answers' email

Peter:

I read about the permitting change that MDE has required. How has this affected your project and its time line? Is your project still a go?

Steve Myer

>>> "Peter Ledig" <[piledig@swbell.net](mailto:piledig@swbell.net)> 5/20/2010 11:02 PM >>>  
Steve,

Steve Ragiel and I appreciate you taking the time yesterday to meet with us concerning EAI's proposal. I'm glad that we were able to clarify a few key issues so BRCPC can move forward on this proposed transaction.

Even though we addressed each of your questions during our meeting, I have included a formal response after each question in your email below.

If you have any further questions, please let me know. I would like to reach a basic agreement on this solicitation by next Friday.

All the best,

Peter

----- Original Message -----

From: Steve Myer

To: Peter Ledig

Cc: Kurt Krammer ; Steve Ragiel

Sent: Friday, May 14, 2010 3:22 PM

Subject: Re: BRCPC RFP P-017 BRCPC response to April 27, 2010 Energy Answers' email

Mr. Ledig and Mr. Kramer:

The evaluation committee has reviewed your firm's response to my April 27, 2010 email. The committee is interested in Option 1, Attachment A and we wish to clarify some additional issues. Please respond to the following questions:

1. The committee wishes to purchase only power from energy answers and not the capacity. Will your firm contract with the BRCPC entities for the power only?

As we discussed, EAI's objective is to sell at least 25 MW of bundled energy and capacity and not only energy.

The energy price of \$68/MWh and capacity price of \$140/MW-day as defined in Attachment A is in 2013 dollars and escalates 3% per year.

EAI's capacity is offered at a very attractive price to BRCPC compared to the 2013/2014 RPM Base Residual Auction ("BRA") results announced by PJM last Friday. The 2013/2014 capacity clearing price for SWMAAC (BGE Zone) is \$226.15/MW-day.

In support of EAI's offered capacity price, since the implementation of BRA, the seven-year average capacity clearing price for SWMAAC (BGE Zone) has been \$182.90/MW-day, the highest of any Locational Deliverability Areas ("LDA") over this seven-year period.

2. Will your firm agree to a mutually agreed upon option to renew by both parties for the two five year renewals? Yes

3. Please define Excusable Events IV Permit or Technical Limits of the Project and V Scheduled Outages. As part of good faith negotiations, EAI will remove Permit or Technical Limits as one of the five "Excusable Events". Scheduled Outages is defined in Attachment B on page 2 under "Planned Outage and Maintenance Scheduled".

4. Please propose a cap on any increase in energy prices for the first year of each renewal term. Given our conversation yesterday and the mutually agreed upon option, EAI will not propose a cap.

Also, as it relates to the 2 (two) five-year extension options, EAI will agree to define the three major suppliers as three major "wholesale" suppliers.

please respond by close of business, Wednesday, May 19, 2010. Thank you.

Steve Myer

>>> "Peter Ledig" <pjledig@swbell.net> 4/29/2010 3:56 PM >>>

Hi Steve,

Based on your feedback and further consideration, Energy Answers International proposes a revised product offering that includes at least 25 MWs of renewable energy. I hope that the BRCPC Committee will strongly consider Option 2 in the attachment as the renewable energy price is significantly lower than other proposals that have already been made to the State by other renewable energy providers. In addition, purchasing this renewable energy product will help existing BRCPC members meet Maryland's growing Renewable Portfolio Standards requirements of 20% by 2022. I don't anticipate this renewable energy product to be available much longer as we are in discussion with others who have shown a great interest in purchasing the renewable energy from this project.

We look forward to visiting with you next week and continuing the discussion.

All the best,

Peter

# **Steve Myer - Re: Fw: BRCPC RFP P-017 BRCPC response to April 27, 2010 Energy Answers' email**

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**From:** "Peter Ledig" <pledig@swbell.net>  
**To:** "Steve Myer" <smyer@baltimorecountymd.gov>  
**Date:** 6/15/2010 3:16 PM  
**Subject:** Re: Fw: BRCPC RFP P-017 BRCPC response to April 27, 2010 Energy Answers' email  
**CC:** "Steve Ragiel" <sraniel@sbcglobal.net>

---

Hi Steve,

It was nice talking with you yesterday and I now have a better understanding of your question. Below in green is our revised language for the "Planned Outage and Maintenance Schedule" section. This language should now address the issue that you raised. We look forward to receiving favorable feedback from the Evaluation Committee by this Friday and proceeding to the contracting phase.

**Planned Outage and Maintenance Schedule:** The Project will be limited to 38 days per calendar year for Planned Maintenance. Annually, at least 90 days prior to the last day of each calendar year, Seller shall provide to Buyer a Planned Outage Schedule highlighting the Planned Maintenance Schedule for the Project for the following calendar year. Planned Maintenance shall include any scheduled outage of one or more boilers for repair, replacement, refurbishment or other maintenance activities which is included in such schedule or any amendment thereof. If the Project schedules its Planned Maintenance during the months of June, July, August and September, the Project will still deliver the 25 MW of energy contemplated by this Agreement to either the high voltage busbar of the Pumphrey substation or the PJM BGE Zone.

If you have any questions, please let me know.

All the best,

Peter

---

----- Original Message -----

**From:** Steve Myer  
**To:** pledig@swbell.net  
**Cc:** sraniel@sbcglobal.net  
**Sent:** Friday, June 11, 2010 7:24 AM  
**Subject:** Re: Fw: BRCPC RFP P-017 BRCPC response to April 27, 2010 Energy Answers' email

---

Peter:

One clarification remains. With regards to your Scheduled Outages, will your firm agree that all scheduled outages must be pre-approved by PJM and during the winter months? Please respond by close of business Monday, June 14, 2010. Thank you.

>>> "Peter Ledig" <[pledig@swbell.net](mailto:pledig@swbell.net)> 6/10/2010 12:22 PM >>>

Hi Steve,

Since the BRCPC meeting was on Tuesday, I'm just checking in on the status of our offer.

All the best,

Peter

----- Original Message -----

From: [Peter Ledig](#)

To: [Steve Myer](#)

Cc: [Steve Ragie](#)

Sent: Monday, June 07, 2010 5:36 PM

Subject: Re: Fw: BRCPC RFP P-017 BRCPC response to April 27, 2010 Energy Answers' email

Hi Steve,

As a follow-up to my earlier email, the PSC will be granting the overall facility permit by the end of July in line with our project schedule expectations. The overall PSC permit may include a requirement to obtain a refuse facility permit, which if it is required, MDE has offered to expedite the permit for us. Please let me know if you have any more questions about the schedule.

Also, I look forward to hearing from you on Wednesday as we previously discussed.

All the best,

Peter

----- Original Message -----

From: [Peter Ledig](#)

To: [Steve Myer](#)

Cc: [Steve Ragie](#)

Sent: Monday, June 07, 2010 3:00 PM

Subject: Re: Fw: BRCPC RFP P-017 BRCPC response to April 27, 2010 Energy Answers' email

Hi Steve,

Thanks for the note. All is well with the project and on schedule. I will provide you with a more detailed response to your questions later today.

All the best,

Peter

----- Original Message -----

From: [Steve Myer](#)

To: [Peter Ledig](#)

Sent: Monday, June 07, 2010 2:05 PM

Subject: Re: Fw: BRCPC RFP P-017 BRCPC response to April 27, 2010 Energy Answers' email

Peter:

I read about the permitting change that MDE has required. How has this affected your project and its time line? Is your project still a go?

Steve Myer

>>> "Peter Ledig" <[pjledig@swbell.net](mailto:pjledig@swbell.net)> 5/20/2010 11:02 PM >>>  
Steve,

Steve Ragiel and I appreciate you taking the time yesterday to meet with us concerning EAI's proposal. I'm glad that we were able to clarify a few key issues so BRCPC can move forward on this proposed transaction.

Even though we addressed each of your questions during our meeting, I have included a formal response after each question in your email below.

If you have any further questions, please let me know. I would like to reach a basic agreement on this solicitation by next Friday.

All the best,

Peter

— Original Message —

From: Steve Myer

To: Peter Ledig

Cc: Kurt Krammer ; Steve Ragiel

Sent: Friday, May 14, 2010 3:22 PM

Subject: Re: BRCPC RFP P-017 BRCPC response to April 27, 2010 Energy Answers' email

Mr. Ledig and Mr. Kramer:

The evaluation committee has reviewed your firm's response to my April 27, 2010 email. The committee is interested in Option 1, Attachment A and we wish to clarify some additional issues. Please respond to the following questions:

1. The committee wishes to purchase only power from energy answers and not the capacity. Will your firm contract with the BRCPC entities for the power only?

---

As we discussed, EAI's objective is to sell at least 25 MW of bundled energy and capacity and not only energy.

The energy price of \$68/MWh and capacity price of \$140/MW-day as defined in Attachment A is in 2013 dollars and escalates 3% per year.

EAI's capacity is offered at a very attractive price to BRCPC compared to the 2013/2014 RPM Base Residual Auction ("BRA") results announced by PJM last Friday. The 2013/2014 capacity clearing price for SWMAAC (BGE Zone) is \$226.15/MW-day.

In support of EAI's offered capacity price, since the implementation of BRA, the seven-year average capacity clearing price for SWMAAC (BGE Zone) has been \$182.90/MW-day, the highest of any Locational Deliverability Areas ("LDA") over this seven-year period.



2. Will your firm agree to a mutually agreed upon option to renew by both parties for the two five year renewals? Yes

3. Please define Excusable Events IV Permit or Technical Limits of the Project and V Scheduled Outages. As part of good faith negotiations, EAI will remove Permit or Technical Limits as one of the five "Excusable Events". Scheduled Outages is defined in Attachment B on page 2 under "Planned Outage and Maintenance Scheduled".

4. Please propose a cap on any increase in energy prices for the first year of each renewal term. Given our conversation yesterday and the mutually agreed upon option, EAI will not propose a cap.

Also, as it relates to the 2 (two) five-year extension options, EAI will agree to define the three major suppliers as three major "wholesale" suppliers.

please respond by close of business, Wednesday, May 19, 2010. Thank you.

Steve Myer

>>> "Peter Ledig" <plledig@swbell.net> 4/29/2010 3:56 PM >>>

Hi Steve,

Based on your feedback and further consideration, Energy Answers International proposes a revised product offering that includes at least 25 MWs of renewable energy. I hope that the BRCPC Committee will strongly consider Option 2 in the attachment as the renewable energy price is significantly lower than other proposals that have already been made to the State by other renewable energy providers. In addition, purchasing this renewable energy product will help existing BRCPC members meet Maryland's growing Renewable Portfolio Standards requirements of 20% by 2022. I don't anticipate this renewable energy product to be available much longer as we are in discussions with others who have shown a great interest in purchasing the renewable energy from this project.

We look forward to visiting with you next week and continuing the discussion.

All the best,

Peter

**Steve Myer - Fw: BRCPC RFP P-017 BRCPC response to April 27, 2010 Energy Answers' email**

---

**From:** "Peter Ledig" <pjledig@swbell.net>  
**To:** "Steve Myer" <smyer@baltimorecountymd.gov>  
**Date:** 5/20/2010 11:03 PM  
**Subject:** Fw: BRCPC RFP P-017 BRCPC response to April 27, 2010 Energy Answers' email  
**CC:** "Steve Ragiel" <sragiel@sbcglobal.net>

---

Steve,

Steve Ragiel and I appreciate you taking the time yesterday to meet with us concerning EAI's proposal. I'm glad that we were able to clarify a few key issues so BRCPC can move forward on this proposed transaction.

Even though we addressed each of your questions during our meeting, I have included a formal response after each question in your email below.

If you have any further questions, please let me know. I would like to reach a basic agreement on this solicitation by next Friday.

All the best,

Peter

— Original Message —

**From:** Steve Myer  
**To:** Peter Ledig  
**Cc:** Kurt Krammer ; Steve Ragiel  
**Sent:** Friday, May 14, 2010 3:22 PM  
**Subject:** Re: BRCPC RFP P-017 BRCPC response to April 27, 2010 Energy Answers' email

Mr. Ledig and Mr. Kramer:

The evaluation committee has reviewed your firm's response to my April 27, 2010 email. The committee is interested in Option 1, Attachment A and we wish to clarify some additional issues. Please respond to the following questions:

---

1. The committee wishes to purchase only power from energy answers and not the capacity. Will your firm contract with the BRCPC entities for the power only?

As we discussed, EAI's objective is to sell at least 25 MW of bundled energy and capacity and not only energy.

The energy price of \$68/MWh and capacity price of \$140/MW-day as defined in Attachment A is in 2013 dollars and escalates 3% per year.

EAI's capacity is offered at a very attractive price to BRCPC compared to the 2013/2014 RPM Base Residual Auction ("BRA") results announced by PJM last Friday. The 2013/2014 capacity clearing price

for SWMAAC (BGE Zone) is \$226.15/MW-day.

In support of EAI's offered capacity price ... since the implementation of BRA, the seven-year average capacity clearing price for SWMAAC (BGE Zone) has been \$182.90/MW-day, the highest of any Locational Deliverability Areas ("LDA") over this seven-year period.

2. Will your firm agree to a mutually agreed upon option to renew by both parties for the two five year renewals?  
Yes

3. Please define Excusable Events IV Permit or Technical Limits of the Project and V Scheduled Outages. As part of good faith negotiations, EAI will remove Permit or Technical Limits as one of the five "Excusable Events". *Scheduled Outages* is defined in Attachment B on page 2 under "Planned Outage and Maintenance Scheduled".

4. Please propose a cap on any increase in energy prices for the first year of each renewal term. Given our conversation yesterday and the mutually agreed upon option, EAI will not propose a cap.

Also, as it relates to the 2 (two) five-year extension options, EAI will agree to define the three major suppliers as three major "wholesale" suppliers.

please respond by close of business, Wednesday, May 19, 2010. Thank you.

Steve Myer

>>> "Peter Ledig" <plidig@swbell.net> 4/29/2010 3:56 PM >>>

Hi Steve,

Based on your feedback and further consideration, Energy Answers International proposes a revised product offering that includes at least 25 MWs of renewable energy. I hope that the BRCPC Committee will strongly consider Option 2 in the attachment as the renewable energy price is significantly lower than other proposals that have already been made to the State by other renewable energy providers. In addition, purchasing this renewable energy product will help existing BRCPC members meet Maryland's growing Renewable Portfolio Standards requirements of 20% by 2022. I don't anticipate this renewable energy product to be available much longer as we are in discussions with others who have shown a great interest in purchasing the renewable energy from this project.

We look forward to visiting with you next week and continuing the discussion.

All the best,

---

Peter

**Steve Myer - BRCPC RFP P-017**

---

**From:** "Peter Ledig" <pjledig@swbell.net>  
**To:** "Steve Myer" <smyer@baltimorecountymd.gov>  
**Date:** 4/29/2010 3:57 PM  
**Subject:** BRCPC RFP P-017  
**CC:** "Kurt Krammer" <kkrammer@energyanswers.com>, "Steve Ragiel" <sraniel@sbc...  
**Attachments:** EAI - Addendum to BRCPC RFP P-017 - 29Apr10.doc

---

Hi Steve,

Based on your feedback and further consideration, Energy Answers International proposes a revised product offering that includes at least 25 MWs of renewable energy. I hope that the BRCPC Committee will strongly consider Option 2 in the attachment as the renewable energy price is significantly lower than other proposals that have already been made to the State by other renewable energy providers. In addition, purchasing this renewable energy product will help existing BRCPC members meet Maryland's growing Renewable Portfolio Standards requirements of 20% by 2022. I don't anticipate this renewable energy product to be available much longer as we are in discussions with others who have shown a great interest in purchasing the renewable energy from this project.

We look forward to visiting with you next week and continuing the discussion.

All the best,

Peter

**CONFIDENTIAL****Energy Answers International, Inc.****Addendum to BRCPC RFP P-017 Response on March 31, 2010****Option 1 - Attachment A Only**

BRCPC purchases 25 MWs as proposed on March 31, 2010 in Attachment A but with a few clarification points.

- Energy Availability Guarantee is defined as 100% of the maximum hourly contract quantity of 25 MWs for each month of the term, subject to Excusable Events. "Excusable Events", expressed in MWh, means any of the following events to the extent it adversely affects Seller's ability to perform its obligations under this Agreement: (i) Force Majeure affecting Seller; (ii) Buyer's failure to provide or cause to be provided, transmission from the Energy Delivery Point to accommodate Requested Energy; (iii) Event of Default by Buyer; (iv) Permit or Technical Limits of the Project; (v) Scheduled Outages.
- Energy Availability Guarantee is applicable to the initial term and the 2 (two) five-year extension options.
- RECs are not included in Attachment A.
- The 2 (two) five-year extension options can only be exercised by Energy Answers International.
- The 2 (two) five-year extension options can be exercised no later than one-year prior to the start of the respective extension option.
- As it relates to the 2 (two) five-year extension options, the three major suppliers and/or brokers will be mutually agreed upon by both parties no later than 10 business days after the respective extension option is exercised.

**Option 2 - Attachment A and B**

BRCPC purchases 25 MWs as proposed on March 31, 2010 in Attachment A and at least 25 MWs from the 100 MWs offered in Attachment B for a total purchase of at least 50 MWs. As a result, Energy Answers International will make the following modifications to Attachment A proposed on March 31, 2010.

**Attachment A:**

- Energy price is reduced in Year 2013 from \$68.00 MWh to \$65.00 MWh which is over a 4% reduction in energy price in Year 2013.
- Energy Availability Guarantee is defined as Firm Liquidated Damages ("LD") Energy.
- Energy Availability Guarantee is applicable to the initial term and the 2 (two) five-year extension options.
- Energy Delivery Point will be either the high voltage busbar of the Pumphrey substation as outlined in Attachment B or PJM BGE Zone. This energy delivery option is at the sole discretion of Energy Answers International.

**CONFIDENTIAL**

**Energy Answers International, Inc.**

**Addendum to BRCPC RFP P-017 Response on March 31, 2010**

- RECs are not included in Attachment A.
- The 2 (two) five-year extension options can only be exercised by BRCPC.
- The 2 (two) five-year extension options can be exercised no later than one-year prior to the start of the respective extension option.
- As it relates to the 2 (two) five-year extension options, the three major suppliers and/or brokers will be mutually agreed upon by both parties no later than 10 business days after the respective extension option is exercised.

**Attachment B:**

- No modifications to Attachment B proposed on March 31, 2010.

Steve Myer - BRCPC RFP P-017 Best and Final Offer

---

**From:** "Elona Cadman" <ecadman@energyanswers.com>  
**To:** "Steve Myer" <smyer@baltimorecountymd.gov>  
**Date:** 3/31/2010 3:52 PM  
**Subject:** BRCPC RFP P-017 Best and Final Offer  
**Attachments:** 103110L01.SMyer.RFP P017.pdf; ATT A - 033110 BASE CONTRACT  
EXTENSION.pdf; ATT B - Fairfield Fixed Price PPA Term Sheet - USM -  
31Mar10.pdf

---

Dear Mr. Myer,

Please see attached "Best and Final Offer" letter and two attachments.

If you have any questions, please don't hesitate to contact me.

Respectfully submitted, Elona

*Elona M. Cadman*  
*Information Management*  
[ecadman@energyanswers.com](mailto:ecadman@energyanswers.com)  
Energy Answers International, Inc.  
[www.energyanswers.com](http://www.energyanswers.com)  
79 N. Pearl Street, 4th Floor  
Albany, NY 12207  
ph: 518-434-1227 fx: 518-436-6343

**EnergyAnswers**  
**International**  
The Resource Recovery Company

March 31, 2010

Stephen P. Myer  
Senior Buyer  
Baltimore County -- Purchasing and Disbursements  
400 Washington Avenue, Room 148  
Towson, Maryland 21204-4665

Re: RFP P-017 -- Term Contract for Electric Power Purchase "Best and Final Offer"

Dear Mr. Myer,

We are offering the following 25 MW block of electricity for a term of 10 years (see Attachment A).

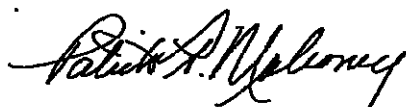
It includes an Energy Price of \$68.00/MWh and Capacity Price of \$140.00/MW-Day, and a 3% annual escalator. In addition, there are 2 (two) five-year extension options that can be exercised by Energy Answers International.

The Maryland Department of General Services ("DGS") has indicated that, as a member of BRCPC, it is interested in purchasing renewable electricity from Energy Answers' Fairfield Renewable Energy Facility as part of this procurement, RFP P-017. Accordingly, in addition to the 25 MW Energy Answers previously offered to BRCPC, Energy Answers is now offering an additional 25 MW of renewable electricity pursuant to the terms and conditions set forth in Attachment B. Should BRCPC purchase this electricity, then the remaining renewable electricity is available to its members pursuant to the same terms and conditions.

The terms and conditions outlined in the Attachments are valid until April 30, 2010.

We look forward to your positive response.

Respectfully submitted,



---

Patrick F. Mahoney  
President and CEO

Cc: Kurt Krammer, Project Manager



25 MW (ENERGY @ \$68/MWh; CAPACITY @ \$140/MWD)\*

YEAR	ENERGY (MWh)	CAPACITY (MWh)	TOTAL (MWh)
2013	\$68.00	\$5.83	\$73.83

\*Energy and Capacity price escalates @ 3% per year

---

CONTRACT EXTENSION

TWO 5 YEAR PERIODS

ENERGY PRICE:

The first year of the extension (2023) energy price will be calculated as follows:

Energy Price for Year 2023 = (Energy Price 2022 X 1.03) +/- 50%(Market Price – Year 2022 X 1.03)

Market Price = Average of Year 2023 Forward Prices from three major Suppliers

Any reduction in energy prices from this calculation will be capped at a maximum of \$2/MW.

Energy Prices for Years 2024 thru 2027 will be inflated by 3%/year.

The energy price for year 2028 will be calculated using the same methodology.

Energy Prices for Years 2029 thru 2032 will be inflated by 3%/year.

CAPACITY PRICE:

The first year of the extension (2023) capacity price will be calculated as follows:

Capacity Price for Year 2023 = (Capacity Price 2022 X 1.03) +/- 50 %(Market Price – Capacity Price Year 2022 X 1.03)

Market Price = Base Residual Auction Capacity Price

Any reduction in capacity prices from this calculation will be capped at 3% of 2022 Capacity Price.

Capacity prices for Years 2024 thru 2027 will be inflated by 3%/year.

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Capacity price for year 2028 will be calculated using the same methodology.

Capacity Prices for Years 2029 thru 2032 will be inflated by 3%/year.

## Energy Answers International, Inc.

### Renewable Energy Power Purchase Agreement Term Sheet

Term Sheet Date: March 31, 2010

**Seller:** Fairfield Renewable Energy Project ("Project"), a special purpose Delaware limited liability company and a wholly owned subsidiary of Energy Answers International, Inc., a New York Corporation ("Seller")

**Buyer:** Baltimore Regional Cooperative Purchasing Committee ("Buyer")

**Project:** The Fairfield Renewable Energy Project is under development in the permitting and financing stage. The Project will be constructed on a 90 acre industrial brownfield site located on the Fairfield Peninsula in Baltimore, Maryland and interconnected to BGE's Pumphrey substation. The project consists of a 145 MW (gross) combined heat and power plant and two or more separately located fuel production facilities. The Project will utilize Seller's patented and proven Processed Refuse Fuel ("PRF") technology to generate steam and electricity. Commercial operation is expected to commence in June 2013.

**Contract  
Quantity:** 100 MW

**Contract Term:** The Power Purchase Agreement ("PPA") will become effective on the date of execution and will have a term of 20 years commencing on January 1, 2014 through December 31, 2033, 7 days a week (7x24), hours ending 0100 – 2400.

**Products:** Energy – Seller will provide energy pursuant to terms specified herein. Buyer will pay Seller for all energy delivered, up to the Contract Quantity, to Energy Delivery Point.

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**Capacity –** Seller will provide capacity from the Project. Buyer will pay Seller for the capacity as part of the Purchase Price.

**Renewable Energy Credits ("RECs")** – For each MWh of Energy generated from the Project, the Seller will provide either a Maryland Tier I or Tier II REC based on the Project's regulatory designation. Buyer will pay Seller for the RECs as part of the Purchase Price.

**Purchase Price:** Buyer will pay Seller for all Energy delivered to Energy Delivery Point at a price of \$120.00 per MWh (\$2010), escalating 3% per year. The Purchase Price includes Energy and associated RECs along with Capacity.

**Availability  
Guarantee:**

The Energy Availability Guarantee is 100% of the maximum hourly Contract Quantity for each month of the Contract Term, subject to Excusable Events defined below.

"Excusable Events", expressed in MWh, means any of the following events to the extent it adversely affects Seller's ability to perform its obligations under this Agreement: (i) Force Majeure affecting Seller; (ii) Buyer's failure to provide or cause to be provided, transmission from the Energy Delivery Point to accommodate Requested Energy; (iii) Event of Default by Buyer; (iv) Permit or Technical Limits of the Project; (v) Scheduled Outages.

**Scheduling:** Seller to provide day-ahead schedule of expected Energy. Scheduling requirements will be specified in the PPA.

**Energy Delivery  
Point:**

The high voltage busbar of the Pumphrey substation (PJM BGE Zone; Pnode ID: 48933931 / 48933933)

**Transmission:** Seller shall be responsible to deliver the Energy to the Energy Delivery Point. Buyer shall be responsible for all transmission arrangements and costs to receive Energy at and after the Energy Delivery Point.

**Planned Outage  
and Maintenance**

~~**Scheduled:** The Project will be limited to a maximum of 30 days per calendar year for Planned Maintenance. Annually, at least 90 days prior to the last day of each calendar year, the Project shall provide to Buyer the Planned Outage Schedule detailing the Planned Maintenance Schedule for the Project for the following calendar year. The Project will work in coordination with Buyer and, if~~

necessary, in planning scheduled outages and shall use commercially reasonable efforts to schedule its Planned Maintenance during the historically lowest demand period, typically April and May. It is anticipated but not guaranteed, that these dates may be shifted by request of Buyer with 45 days prior notice.

**Credit:** Any PPA resulting from this process will include stand alone credit terms. Any credit requirements or collateral provisions requested by Buyer should be specified as a term and condition as part of any definitive PPA. Any credit terms deemed necessary by Seller for Buyer will be based upon its review of Buyer's credit quality, any proposed Guarantor, its proposed credit terms for Seller and the overall proposal and will be negotiated as part of any definitive PPA.

**Billing and Payment:** The PPA will include billing and payment provisions that are appropriate for an agreement of this type.

**Change in Law:** Parties to discuss Change in Law. It is Seller's intention that the PPA contains mechanism to account for any change in law, including any change in environmental legislation and/or regulation that significantly affects the Project operating costs. Examples of such legislation or regulation include:

- Greenhouse gas/CO<sub>2</sub> legislation or regulations;
- Clean Air Interstate Rule (or successor) NO<sub>x</sub> and SO<sub>2</sub> regulations; and
- Best Available Control Technology ("BACT") regulations.

Parties shall discuss a mutually agreeable mechanism to equitably allocate responsibility for the costs attributable to such changes in law. This mechanism would respect both the economic balance of the originally contemplated transaction as well as Seller's interest in the economic life of the Project and the capital expenditures which may be necessary as a result of any such change in law.

---

~~**Force Majeure:** The PPA will include Force Majeure provisions that are appropriate for an agreement of this type.~~

**Indemnification:** The PPA will include Indemnification provisions that are appropriate for an agreement of this type.

**Representations  
and Warranties:**

The PPA will include Representations and Warranties that are appropriate for an agreement of this type.

**Default:**

Default will occur upon either party's failure to pay any amount due or upon a material event of default. Parties shall have a reasonable opportunity to cure such defaults. Non-payment for delivered Products shall constitute an event of default and shall be subject to limited cure rights.

**Termination  
Rights:**

Buyer and Seller shall have reasonable termination rights following the default of the other party. This provision will also allow either party to cure any such default and will also include cure rights for financing parties.

**Assignment:**

The PPA will not be assignable by either party without the other party's consent, except that the Seller may assign to its affiliates and make collateral assignments to financing parties without Buyer's consent. The PPA will include standard protective provisions for financing parties that are typical for limited recourse financings of electric generating projects.

**Governing Law:**

Maryland

**Miscellaneous:**

Definitive PPA will control in the event of conflicts with terms and conditions summarized herein, except for pricing.

**Communications:** All communications, questions, requests for information and any other matters regarding this PPA Term Sheet must be directed to:

Attention: Kurt Krammer  
Email: [kkrammer@energyanswers.com](mailto:kkrammer@energyanswers.com)  
Phone: 443-271-4189

## Steve Myer - Draft Contract and Presentation

---

**From:** "Elona Cadman" <ecadman@energyanswers.com>  
**To:** "Steve Myer" <smyer@baltimorecountymd.gov>  
**Date:** 12/11/2009 11:06 AM  
**Subject:** Draft Contract and Presentation

---

Dear Mr. Myer,

Thank you for the Contract clarification.

Attached please find the PPT presentation in PDF format.

If you need anything further, please don't hesitate to contact me.

Happy holidays, Elona

*Elona M. Cadman*  
Information Management  
[ecadman@energyanswers.com](mailto:ecadman@energyanswers.com)  
Energy Answers International, Inc.  
[www.energyanswers.com](http://www.energyanswers.com)  
79 N. Pearl Street, 4th Floor  
Albany, NY 12207  
ph: 518-434-1227 fx: 518-436-6343

---

**From:** Steve Myer [mailto:smyer@baltimorecountymd.gov]  
**Sent:** Fri 12/11/2009 8:31 AM  
**To:** Elona Cadman  
**Subject:** Re: FW: Draft Contract

Ms. Cadman:

The sample contract was part of the bid solicitation. Please email me a copy of your oral power point presentation.

Steve Myer

---

>>> "Elona Cadman" <ecadman@energyanswers.com> 12/10/2009 8:39 AM >>>

Dear Mr. Myer,

I am following up on the meeting you had with Energy Answers on Tues, Dec. 8th regarding the BRC PC solicitation.

Do you have a Draft Contract that you could send me?

Respectfully, Elona

*Elona M. Cadman*  
Information Management  
[ecadman@energyanswers.com](mailto:ecadman@energyanswers.com)

Energy Answers International, Inc.  
[www.energyanswers.com](http://www.energyanswers.com)  
79 N. Pearl Street, 4th Floor  
Albany, NY 12207  
ph: 518-434-1227 fx: 518-436-6343



28 years in the Resource Recovery Business.

Experienced management and advisory team with proven development history.

Solid business network and compelling global business strategy.

Multiple Proprietary Technologies addressing project needs for both new and existing resource recovery systems

- Fuel processing and combustion technology
- Sludge co-combustion
- Ash processing and materials recovery

Successfully develop, design, build, finance, own and operate projects in the private marketplace without public subsidies or price support.

Resource Recovery Technology has superior long-term economic and environmental performance record.

## EnergyAnswers International

The Resource Recovery Company



### Financial Highlights:

1996: Sold Energy Answers Interest in SEMASS Facility for \$75 million

2007: Sold operating assets for \$65 million

# Energy Answers Experience

Energy Answers has been in the Resource Recovery business for 28 years and we stress “resource recovery” as our system is designed to maximize the recovery of both energy and materials and minimize disposal.

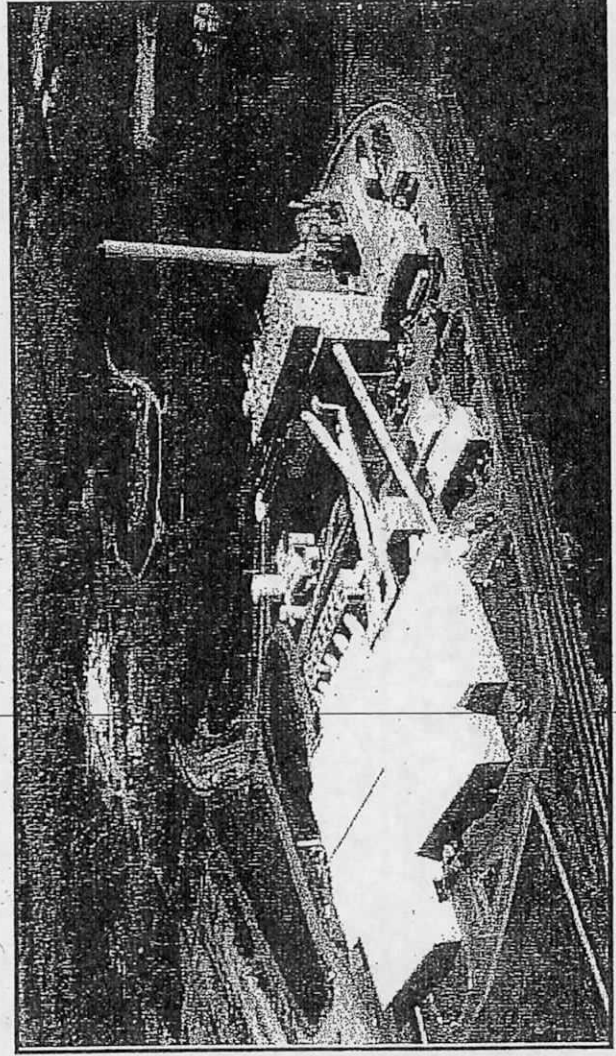
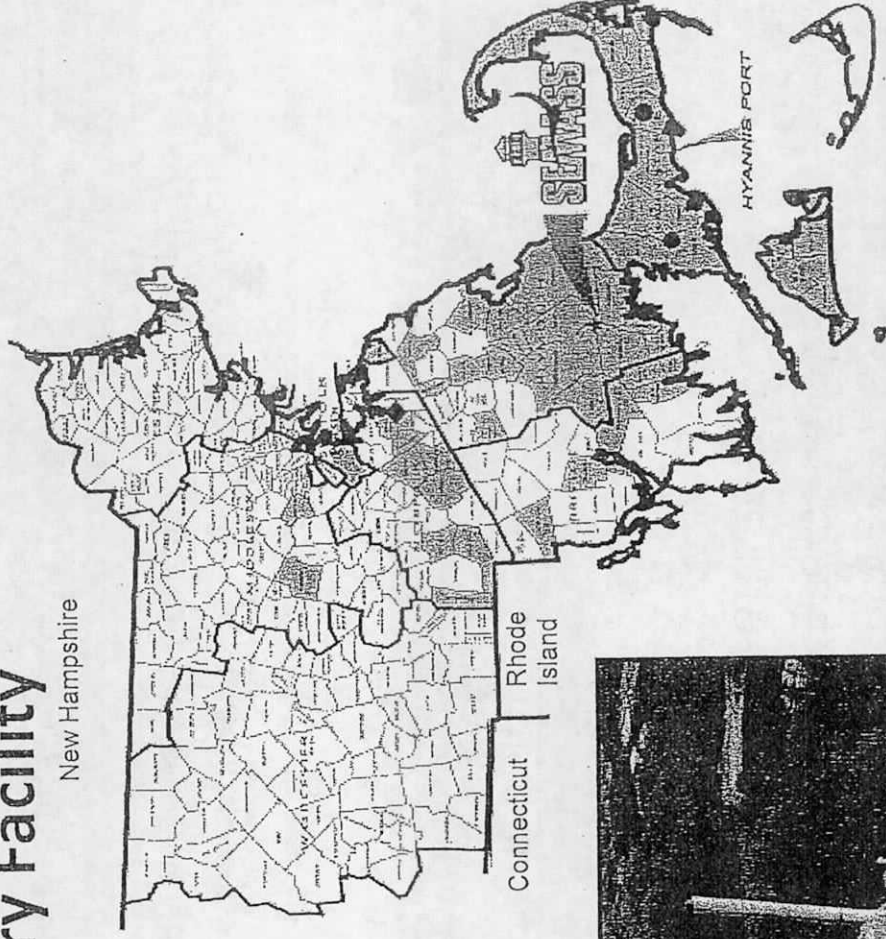
We have designed, financed, owned and operated energy and materials recovery systems which have:

- Processed over 20 million tons of waste
- Generated over 12 million megawatt hours of electricity
- Produced over 3.5 billion pounds of industrial steam
- Recovered 700,000 tons of ferrous metals and 60,000 tons of non-ferrous metals
- Produced 2 million tons of usable aggregate from combustion ash
- Recycled 20million gallons of waste sludge

# Development Experience

## SEMASS Resource Recovery Facility

- Energy Answers developed, designed, financed, built, owned and co-operated (for 8 years) the largest generator of energy from waste in the world.
- SEMASS is located in the Cape Cod region of Massachusetts – an environmentally sensitive region with extremely stringent and difficult regulations.



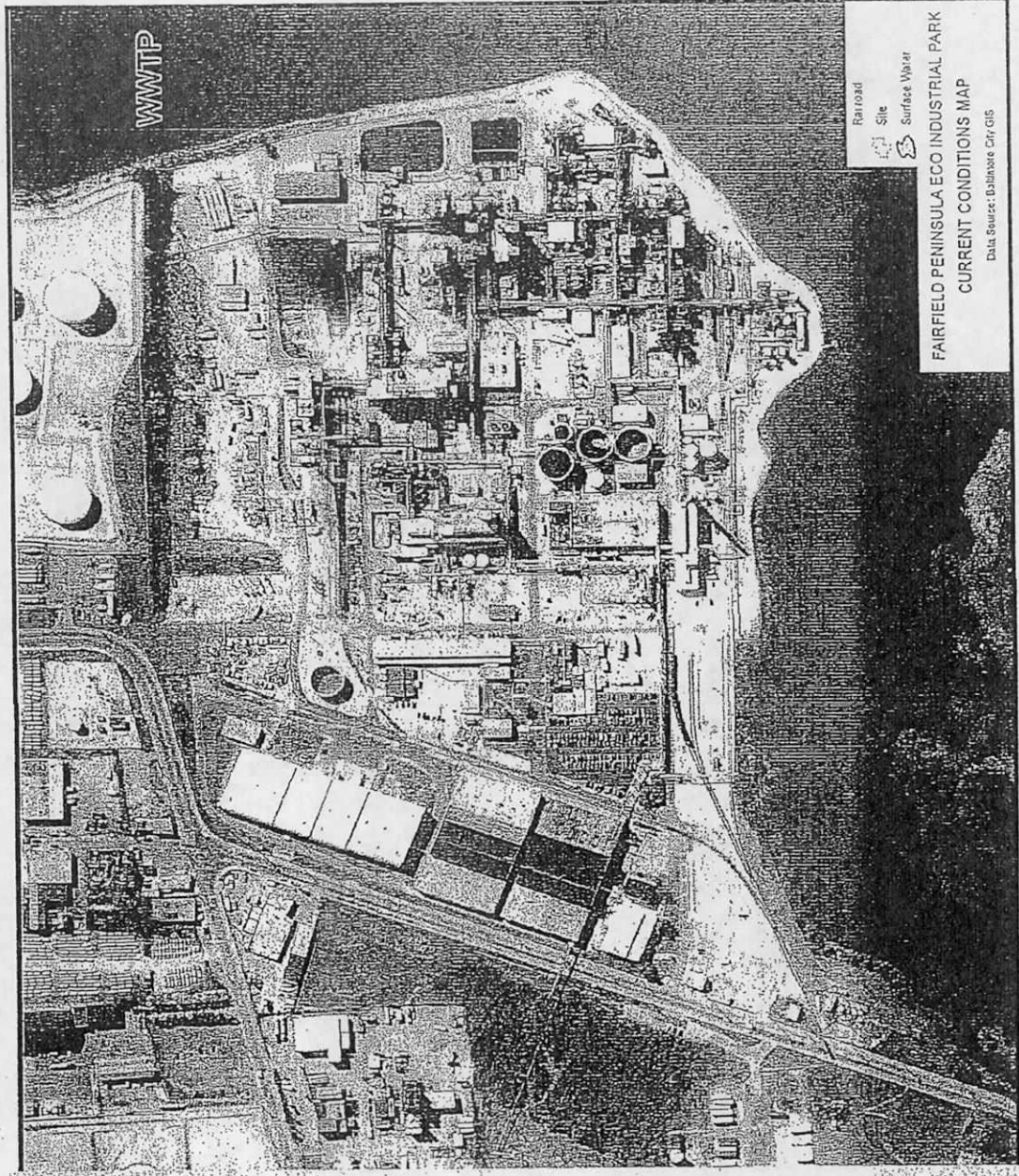
- SEMASS generates 80 MW of power from 3000 tons of Processed Refuse Fuel.
- 6% of the electricity in Massachusetts is generated at SEMASS.



# Reasons Why We Chose This Site

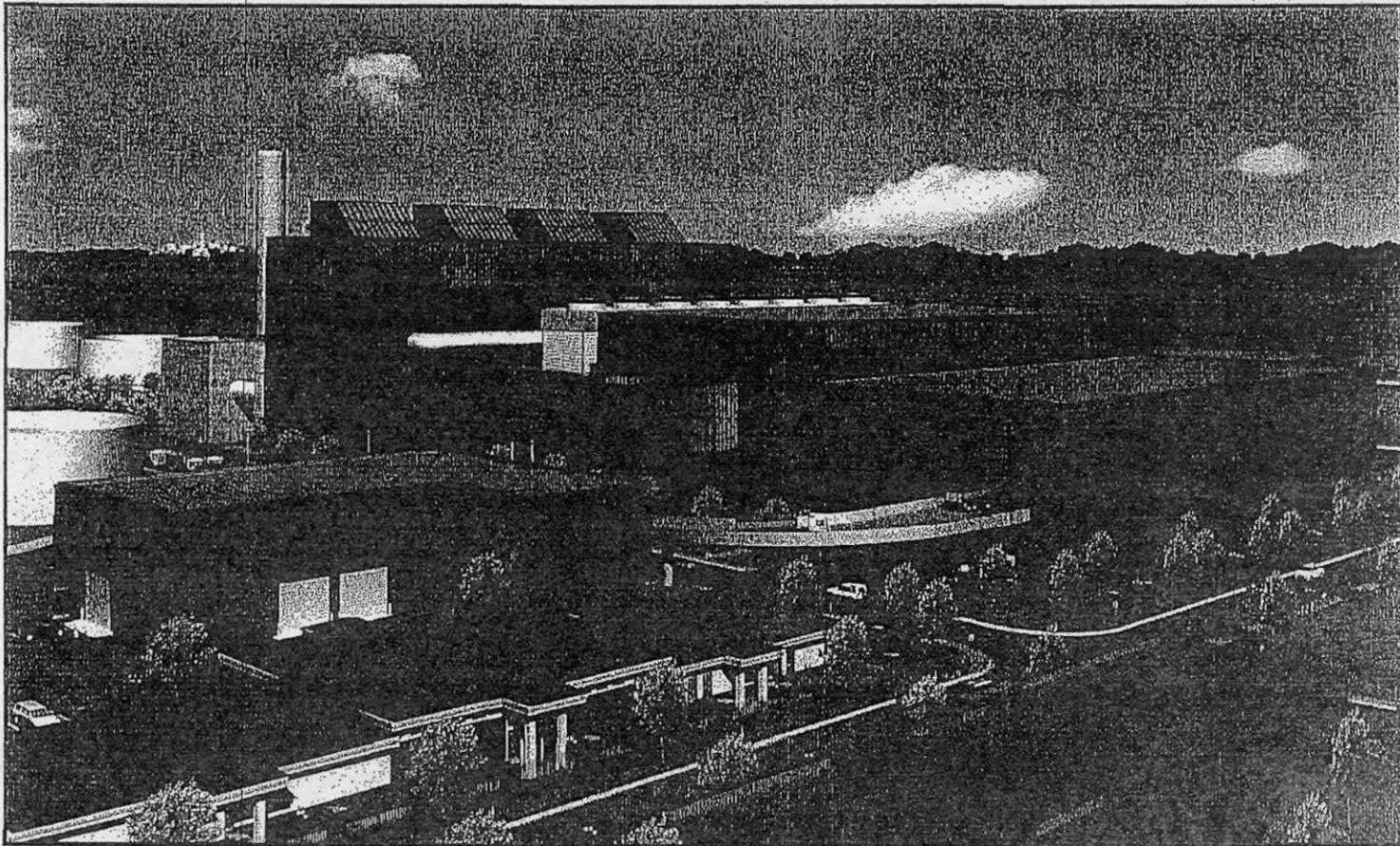
## Site Assets:

1. Direct highway access to regional and interstate system
2. Rail access
3. Internal road and rail network with sidings
4. Electrical grid access and existing steam line
5. City water mains and sanitary sewers to site
6. Reuse of significant buildings and infrastructure
7. In heavy industry zone, in BDC empowerment zone
8. Existing site permits
9. Skilled local industrial workforce
10. A need for both steam and electric power in this market
11. More than 3000' of Baltimore Harbor frontage



FAIRFIELD PENINSULA ECO INDUSTRIAL PARK  
CURRENT CONDITIONS MAP  
Data Source: Baltimore City GIS

# Fairfield Renewable Energy Project



The project consists of a 140 MW combined heat and power plant and two or more separately located, fuel production facilities at 4,000 tons/day.



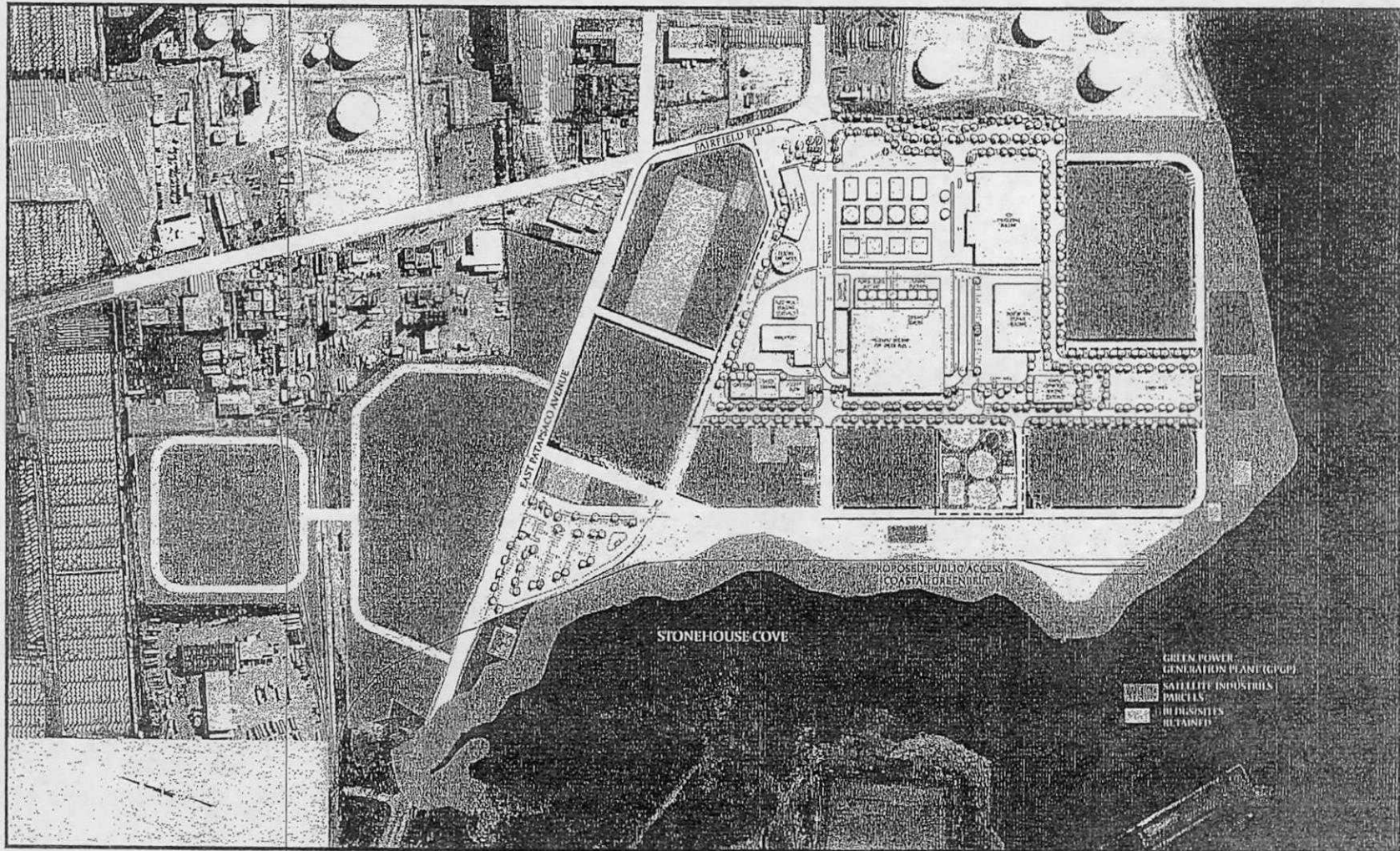
# Fairfield Renewable Energy Project

The site of the power plant is a 90 acre industrial "Brownfield" site located on the Fairfield Peninsula in Baltimore, Maryland. The former home of the FMC pesticide and herbicide manufacturing operation closed in 2008. The site is in full compliance with a RCRA remediation plan for managing contamination.

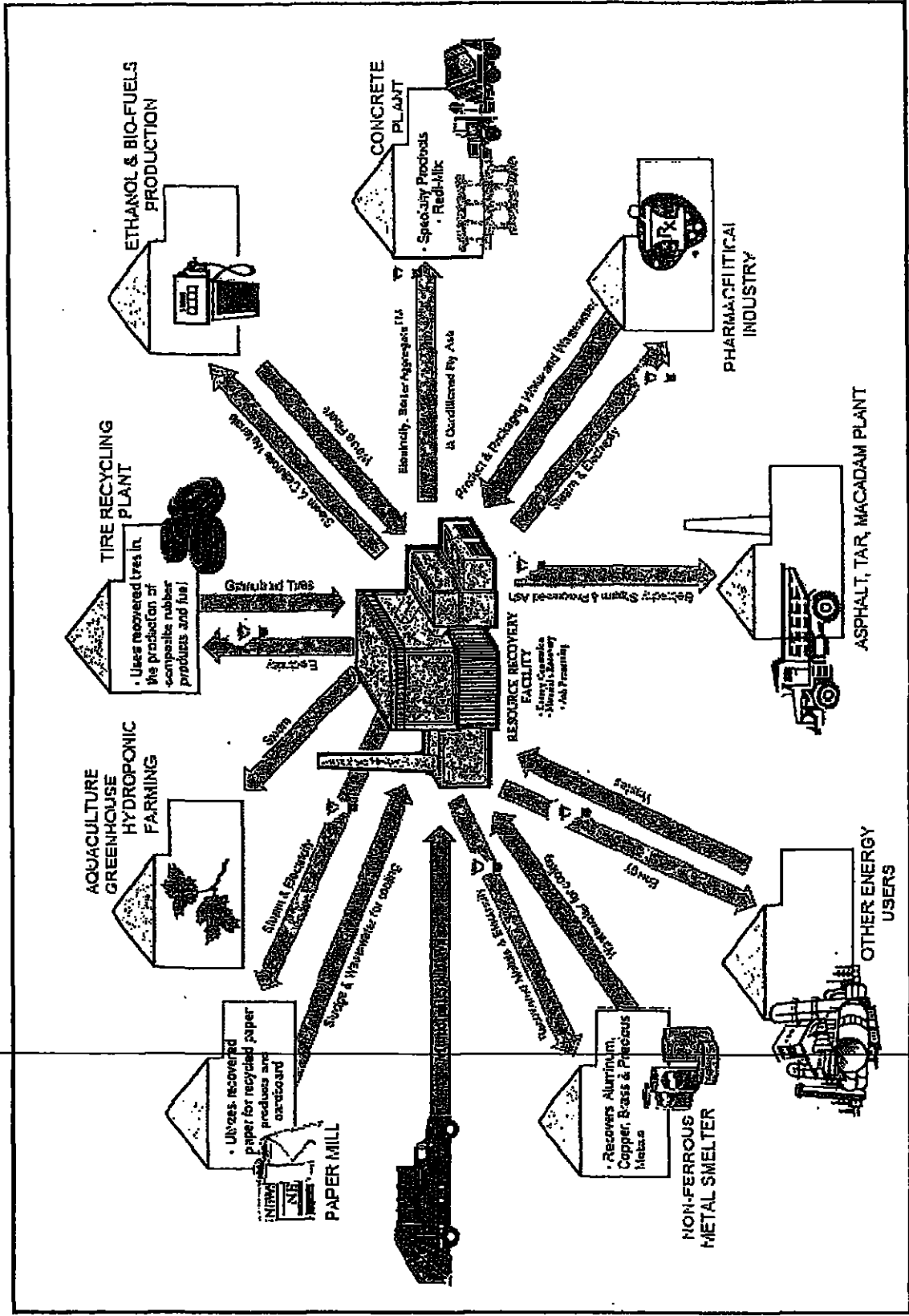


# Fairfield Renewable Energy Project

The Brownfield site will be developed into a Resource Recovery Park for sustainable industries that can share in the synergistic benefits offered.



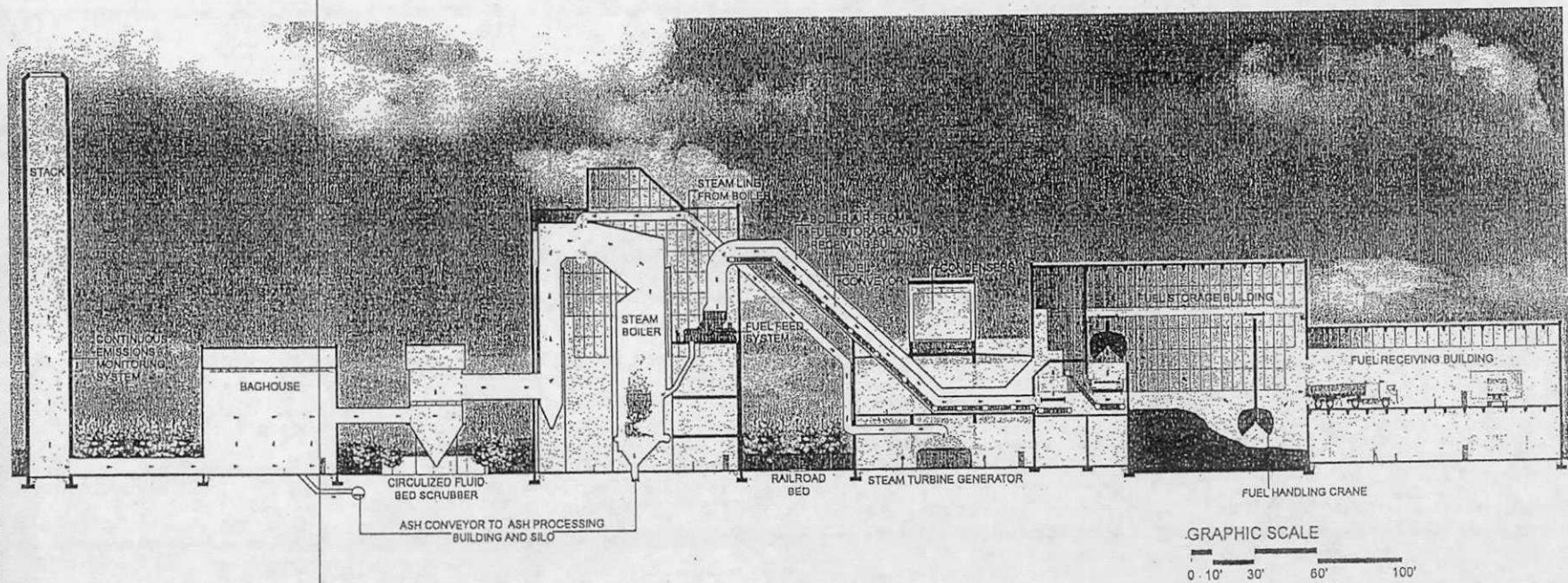
# Economic Benefits through Industrial Synergies





# Fairfield Renewable Energy Power Plant

## Cross Section



# Fairfield Renewable Energy Project

## Summary Estimate of Project Inputs and Outputs

Gross Power Production	140 megawatts
Gross Power Output (kWh per ton)	860
Net Power Production	130 megawatts
Net Power Output (kWh per ton)	775
Municipal Solid Waste Converted to Processed Refuse Fuel Per Day	4,000 tons
Equivalent Amounts of Conventional Fuels Required to Produce Electricity Output	288,000 gallons of fuel oil or 2,000 tons of coal
Carbon Reduction Equivalents	612,000
Full Time Jobs Provided	184
Construction Jobs	406
Projected Annual Direct Wages & Benefits	\$15,542,000
Projected Annual Total Industry Output Generated by the Project Across All Industries	\$353,790,000
Ferrous Metals Recovered (tons/year)	53,728
Non-Ferrous Metals Recovered (tons/year)	5,373
Boiler Aggregate Recovered (tons/year)	132,977
Project Annual Availability	92%

# Project Timeline

- Baltimore City Planning Approval – January 2009
- Baltimore City Zoning Board Decision - February 2009\*
- Submit Air Permit to “Construct” – May 2009
- Submit Air Permit for “Prevention of Significant Deterioration” – May 2009\*
- Submit Air permit for “New Source Performance Standards” – May 2009\*
- Approval by PSC – June 2010
- Selection of EPC contractor– Dec 2009
- Start obtaining financing for the project– Jan 2010
- Start Construction – 2nd Quarter 2010
- Start employment search – 1st Quarter 2010 for construction, 4th Quarter 2012 for operations\*
- Operational training – 2nd quarter 2012
- Start operation – 2nd quarter 2013

\* Provides for Community Involvement

# Fairfield Renewable Energy Project

## Project Offsets & “Green” Benefits

### Reduction of Greenhouse gas emissions:

Operation of the Fairfield Renewable Energy Facility will facilitate the avoidance of CO<sub>2</sub> emissions associated with:

Landfilling 4000 tpd of MSW, equating to **350,000 tpy**

Transporting 4000 tpd approximately 360 additional miles, equating to **97,890 tpy**

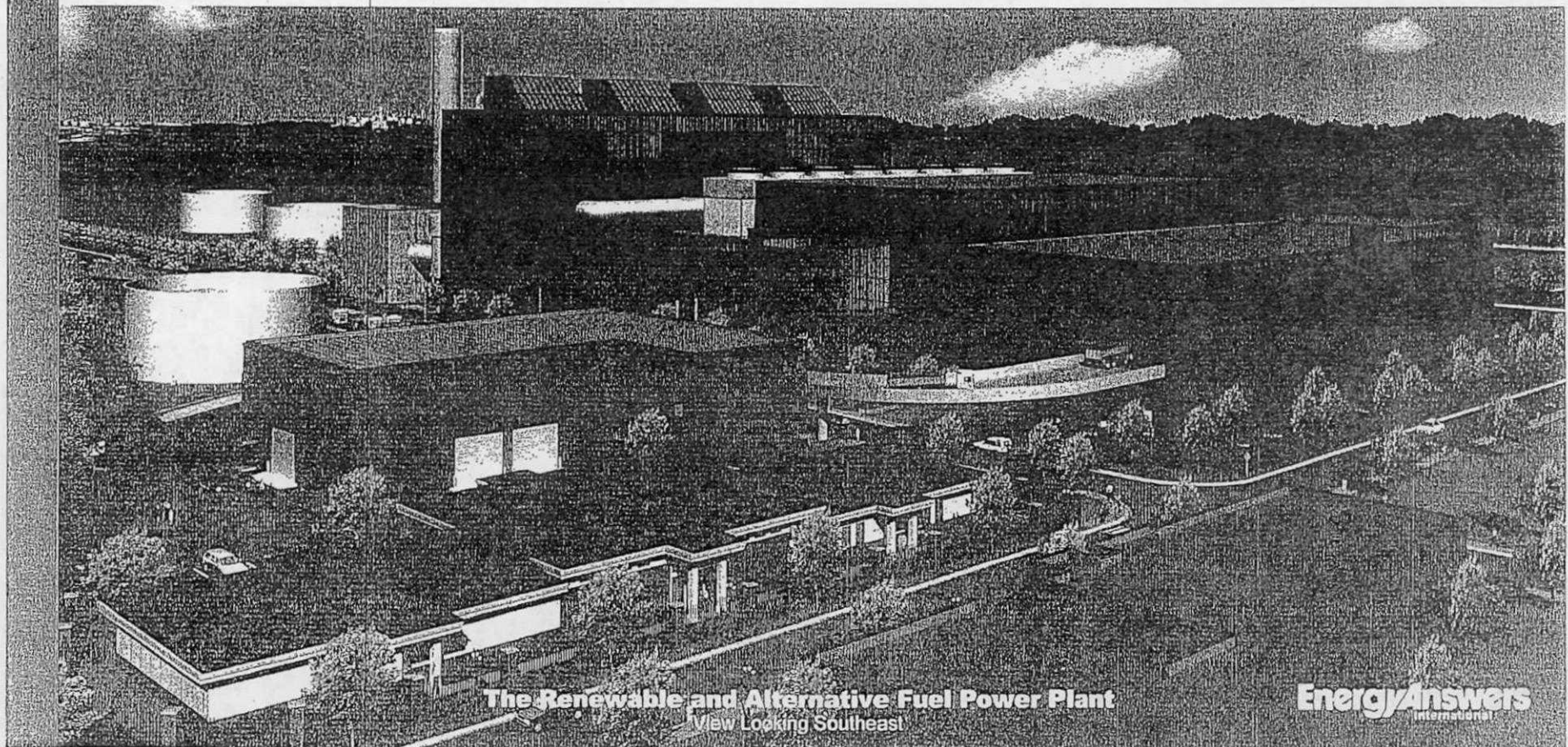
Production of approximately 1,051,200 MWhs of electricity equating to **698,854 tpy**

The Facility will produce, from anthropogenic sources, **620,236 tpy**

This equates to a net reduction of **526,508 tpy** of CO<sub>2</sub> emissions

## Architectural Designs to Conserve Resources include:

- Natural Day Lighting through Translucent Panels
- Manufactured "stone" using Boiler Aggregate™
- Use of Boiler Aggregate™ in Walkway Pavers and A.C. Pavers
- Solar Membrane Roofing System
- Rail Siding
- Energy Efficient Window, Doors and Wall Systems



**EnergyAnswers**  
International

Expected to achieve LEED's "Gold" certification, the benefits of the Fairfield Alternative and Renewable Energy Project go beyond "sustainable" to "restorative" and include:

**LAND:**

- brownfield recovery
- landfill use reduction

**AIR:**

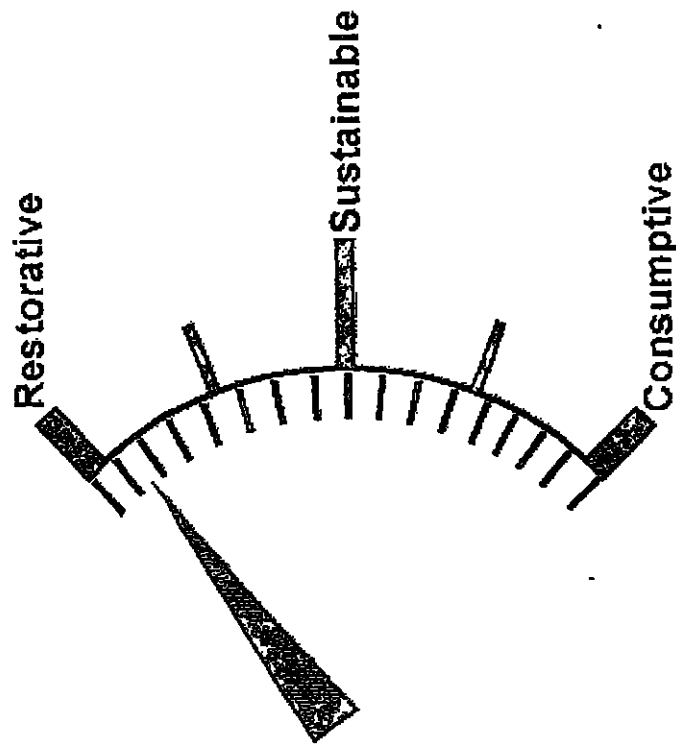
- GHG emission reductions
- overall emissions reductions
- criteria pollutants reductions

**WATER:**

- treated water use reduction
- use of 3 MGD of treated wastewater effluent for cooling
- industrial wastewater elimination
- landfill leachate elimination

**RESOURCES:**

- extraction reduction (metals and aggregate recovery)
- fossil fuel use reduction
- new project development using recovered materials
- existing buildings and infrastructure





## **The Energy Answers Proposal**

- Will assist the BRC PC members in meeting the Maryland Renewable Energy Standards to be satisfied in 2022
- Directly meets the terms for the Solicitation by placing a plant in Baltimore City
- Only Power Plant in Maryland designed to generate power from renewable Processed Refuse Fuel (PRF)
- Our Base proposal is to supply 25 MW for ten (10) years
- We offer an additional 25 MW for Ten (10) years
- An extension of the base 25 MW proposal for 2 additional Five- year periods
- An extension of the additional 25 MW for 2 additional five-year periods

## Base 25MW Proposal

- Energy @\$68/MW - Capacity @\$100/MWD
- Total Price - \$72.17 MWH in 2013 (year 1)
  - Energy @ \$68/MW
  - Capacity @\$4.17 MWD
- ✓ Energy price Inflates @1.5%/year for year 2 & 3 with years 4-10 adjustments based on the CPI
- ✓ Capacity Price inflates @3%/year
- ✓ Energy Price in years 4-10 will be set at the previous years price plus the CPI adjustment based on the previous years CPI
- ✓ Energy Answers will provide either Maryland Tier I or Tier II REC's based on the plant's regulatory designation



## **Additional 25 MW Proposal**

- Energy @\$68/MW - Capacity @\$100/MWD
- Total Price - \$72.17 MWh in 2013 (year 1)
  - Energy @ \$68/MW
  - Capacity @\$4.17 MWD
- ✓ Energy price Inflates @1.5%/year for year 2 & 3 with years 4-10 adjustments based on the CPI
- ✓ Capacity price inflates @3%/year
- ✓ Energy Price in years 4-10 will be set at the previous years price plus the CPI adjustment based on the previous years CPI
- ✓ Energy Answers will provide either Maryland Tier I or Tier II REC's based on the plant's regulatory designation

# Base Contract Extension

## Two 5 Year Periods – Energy Price

- ❖ 2023 is the 1<sup>st</sup> year of the extension
- **Energy Price:**
  - The energy price for 2023 = (energy price 2022 X 1.03) +/- 50% (Market Price - year 2002 X 1.03)
  - Market Price = Average of the year 2023 Forward Prices from 3 major suppliers
  - Any Reduction in Energy Prices will be capped at a maximum of \$2/MW
  - Energy Prices for years 2024 thru 2027 will be inflated by CPI
  - Energy Price for year 2028 will be calculated using the same methodology
  - Energy Prices for years 2029 thru 2032 will be inflated by CPI

## **Base Contract Extension**

### **Two 5 Year Periods - Capacity Price**

- ❖ 2023 is the 1<sup>st</sup> year of the extension
- **Capacity Price:**
  - The Capacity Price for 2023 = (Capacity Price 2022 X 1.03) +/- 50% (Market Price - Capacity Price year 2022 X 1.03)
  - Any reduction in Capacity prices from this calculation will be capped at 3% of the 2022 capacity Price
  - Capacity prices for year 2024 through 2027 will be inflated by 3%/year
  - Capacity Price for year 2028 will be calculated using the same methodology
  - Capacity Prices for years 2029 thru 2032 will be inflated by 3%/year

## No Cause Termination Terms

- Energy Payment
  - 5 year PJM spot market term
  - Revenue shortfall obligation remains with BRP PC for 5 years
  - Lump sum payment option available. Future year energy prices would be based on forward curves
- Capacity Payment
  - BRP PC responsible for delta in contractual capacity price and the interim PJM capacity auction price
  - If lump sum payment is requested BRP PC will pay the difference between commercially available capacity bi-lateral and existing contract

# EnergyAnswers International

Energy Answers International, Inc.  
*The Resource Recovery Company*

---

Patrick F. Mahoney, P.E.  
Chief Executive Officer



79 North Pearl Street, Albany, New York 12207

Phone: (518) 434-1227

1110 Strand Street, Christiansted, Virgin Islands 00820

Phone: (340) 778-7505

[www.energyanswers.com](http://www.energyanswers.com)

[pmahoney@energyanswers.com](mailto:pmahoney@energyanswers.com)

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# EnergyAnswers International

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October 8, 2009

Baltimore Regional Cooperative Purchasing Committee  
Baltimore County Maryland – Office of Budget and Finance  
Purchasing Bureau  
400 Washington Avenue, Room 148  
Towson, Maryland 21204-4665

Greetings:

In response to the Request for Proposal for Term Contract for Electric Power Purchase, Solicitation No. P-017, Energy Answers International, Inc. (Energy Answers) is pleased to submit our price proposal response.

The attached price proposal has been separated into the following:

- Base proposal for 25MW for ten (10) years
- Additional 25MW for ten (10) years
- Extension of the 25MW Base Proposal for 2 five-year periods
- Extension of the Additional 25MW for 2 five-year periods

An inflation factor has been built into the energy and capacity component. The energy component has a combination of a fixed adjustment of 1.5% for the first two years and a CPI adjustment over the remaining years. The capacity component is adjusted at a fixed rate of 3%. The two five-year extensions have an adjustment in the first year and sixth year for both energy and capacity. The adjustments will allow the energy and capacity prices to more closely match the market in the later contract years.

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Energy and capacity will be provided from a new, highly reliable facility connected directly to the BGE transmission system by a new 115KV supply line. The plant will operate around the clock with minimum downtime for routine maintenance. The technology being used in the plant minimizes the amount of emissions and the fuel source is dependable and not subject to the extreme fluctuations encountered with fossil fuels.

Office of Budget and Finance – Purchasing Bureau  
October 8, 2009  
Page 2

Energy Answers shares Baltimore's mission of diversifying its energy sources and with our environmentally advanced technologies and we look forward to working with the Baltimore Regional Cooperative Purchasing Committee to produce clean and green energy.

Sincerely,

A handwritten signature in black ink, appearing to read "Patrick F. Mahoney". The signature is fluid and cursive, with the first name "Patrick" being more prominent.

Patrick F. Mahoney  
President and CEO

ORIGINAL

**Response to Request for Proposal  
for  
Term Contract for Electric Power Purchase  
Solicitation No. P-017  
Due: October 9, 2009 by 2:00 pm**

**Price Proposal**

Submitted to:  
Baltimore Regional Cooperative Purchasing Committee  
Baltimore County Maryland  
Office of Budget and Finance  
Purchasing Bureau  
400 Washington Avenue, Room 148  
Towson, Maryland 21204-4665

Submitted by:

**EnergyAnswers**  
**International**

---

79 North Pearl Street  
Albany, New York 12207  
518-577-3445  
[www.energyanswers.com](http://www.energyanswers.com)

October 2009



BALTIMORE REGIONAL COOPERATIVE PURCHASING COMMITTEE  
REQUEST FOR PROPOSAL NO. P-017  
TERM CONTRACT FOR ELECTRICAL POWER PURCHASE  
Due Date 10/09/09, Time: 2:00P.M.

PRICE SHEET PAGE 1 OF 1		REQUEST FOR PROPOSAL	
LINE NO.	COMMODITY/SERVICE DESCRIPTION	UNIT	UNIT PRICE
1	COMMODITY CODE: 961-85  BASE 25 MW PROPOSAL  * 1ST YEAR PRICE.  PLEASE SEE ATTACHED SHEET FOR UNIT PRICE FOR YEARS 2-10.  PRICE INCLUDES: CAPACITY, ENERGY AND RENEWABLE ENERGY CREDITS.	MWh	\$ <u>72.17*</u>

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GRAND TOTAL \$72.17\*

COMPANY NAME: ENERGY ANSWERS INTL, INC.

FED ID OR SOCIAL SECURITY NO. 14-1718933 ENERGY ANSWERS INTL, INC.

BASE 25MW (ENERGY @ \$68/MW; CAPACITY @ \$100/MWD)

		<u>Energy</u>	<u>Capacity**</u>	<u>Total</u>
2009		\$64.07	\$3.70	\$67.77
2010		\$65.03	\$3.82	\$68.85
2011		\$66.00	\$3.93	\$69.94
2012		\$67.00	\$4.05	\$71.04
2013	Year 1	\$68.00	\$4.17	\$72.17
2014	Year 2	\$69.02	\$4.29	\$73.31
2015	Year 3	\$70.06	\$4.42	\$74.48
2016	Year 4	***	\$4.55	***
2017	Year 5	***	\$4.69	***
2018	Year 6	***	\$4.83	***
2019	Year 7	***	\$4.98	***
2020	Year 8	***	\$5.12	***
2021	Year 9	***	\$5.28	***
2022	Year 10	***	\$5.44	***

\*Energy price inflates @ 1.5%/year for year 2 and 3  
with years 4 through 10 adjustments based on the CPI

\*\*Capacity price inflates @ 3%/year

\*\*\*Energy price in years 4-10 will be set at the previous year price  
plus the CPI adjustment based on the previous years CPI

Energy Answers will provide either Maryland Tier 1 or Tier 2  
Renewable Energy Credits based on the Plant's  
regulatory designation

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**BASE CONTRACT EXTENSION**  
**TWO 5 YEAR PERIODS**

**ENERGY PRICE:**

The first year of the extension (2023) energy price will be calculated as follows:

**Energy Price for Year 2023 = (Energy Price 2022 X 1.03) +/- 50%(Market Price – Year 2022 X 1.03)**

**Market Price = Average of Year 2023 Forward Prices from three major Suppliers**

Any reduction in energy prices from this calculation will be capped at a maximum of \$2/MW.

Energy Prices for Years 2024 thru 2027 will be inflated by CPI.

The energy price for year 2028 will be calculated using the same methodology.

Energy Prices for Years 2029 thru 2032 will be inflated by CPI.

**CAPACITY PRICE:**

The first year of the extension (2023) capacity price will be calculated as follows:

**Capacity Price for Year 2023 = (Capacity Price 2022 X 1.03) +/- 50 % (Market Price – Capacity Price Year 2022 X 1.03)**

**Market Price = Base Residual Auction Capacity Price**

Any reduction in capacity prices from this calculation will be capped at 3% of 2022 Capacity Price.

Capacity prices for Years 2024 thru 2027 will be inflated by 3%/year.

---

Capacity price for year 2028 will be calculated using the same methodology.

Capacity Prices for Years 2029 thru 2032 will be inflated by 3%/year.

ADDITIONAL 25MW (ENERGY @ \$68/MW; CAPACITY @ \$100/MWD)

		<u>Energy</u>	<u>Capacity**</u>	<u>Total</u>
2009		\$64.07	\$3.70	\$67.77
2010		\$65.03	\$3.82	\$68.85
2011		\$66.00	\$3.93	\$69.94
2012		\$67.00	\$4.05	\$71.04
2013	Year 1	\$68.00	\$4.17	\$72.17
2014	Year 2	\$69.02	\$4.29	\$73.31
2015	Year 3	\$70.06	\$4.42	\$74.48
2016	Year 4	***	\$4.55	***
2017	Year 5	***	\$4.69	***
2018	Year 6	***	\$4.83	***
2019	Year 7	***	\$4.98	***
2020	Year 8	***	\$5.12	***
2021	Year 9	***	\$5.28	***
2022	Year 10	***	\$5.44	***

\*Energy price inflates @ 1.5%/year for year 2 and 3  
with years 4 through 10 adjustments based on the CPI

\*\*Capacity price inflates @ 3%/year

\*\*\*Energy price in years 4-10 will be set at the previous year price  
plus the CPI adjustment based on the previous years CPI

Energy Answers will provide either Maryland Tier 1 or Tier 2  
Renewable Energy Credits based on the Plant's  
regulatory designation

---

**ADDITIONAL CONTRACT EXTENSION**  
**TWO 5 YEAR PERIODS**

**ENERGY PRICE:**

The first year of the extension (2023) energy price will be calculated as follows:

**Energy Price for Year 2023 = (Energy Price 2022 X 1.03) +/- 50%(Market Price – Year 2022 X 1.03)**

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**CAPACITY PRICE:**

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**Market Price = Base Residual Auction Capacity Price**

Any reduction in capacity prices from this calculation will be capped at 3% of 2022 Capacity Price.

Capacity prices for Years 2024 thru 2027 will be inflated by 3%/year.

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Capacity price for year 2028 will be calculated using the same methodology.

Capacity Prices for Years 2029 thru 2032 will be inflated by 3%/year.

## NO CAUSE TERMINATION TERMS

Any such termination shall be subject to the following terms and conditions:

- Energy Payment - the Contractor will sell all energy covered by the contract into the PJM day ahead or hourly spot market for a five- year period following the termination effective date (or for the remaining term of the contract without giving effect to such termination, if less than five years). The excess, if any, of (a) the original contract price for the sale of energy over (b) the revenue received by the Contractor for the energy sold into the spot market minus all administrative costs and expenses of Contractor associated with such sales and transactions in furtherance thereof, will be reimbursed to the Contractor by the Entity. If the revenue (after giving effect to the aforesaid deductions) from spot market sales is more than the original contract price for the sale of energy, the benefit will accrue to the Contractor. The Contractor will submit invoices monthly to the Entity and payment will be due from the Entity thirty days after submission of each invoice, after which unpaid amounts will accrue interest at the rate of 21% per annum (or, if less, the maximum rate of interest permitted by applicable law). In the event the Entity wants to settle its obligations to the Contractor with a single lump sum payment, it will so notify the Contractor. The Contractor will then solicit and, if commercially practicable, enter into a replacement bilateral contract, and the Entity will pay to the Contractor in a single lump sum an amount (discounted to present value at a rate of 3% per annum) an amount equal to the excess, if any, of (a) the original contract price for the sale of energy over (b) the replacement contract price for the sale of energy minus all administrative costs and expenses of Contractor associated with its entering into such replacement contract. Such payment will be made by Entity within sixty days after the replacement contract effective date, after which interest will accrue on any unpaid amount at the rate provided above.

If a contract cannot be executed the single lump sum contract cannot be executed.

- Capacity Payment – the Entity will be responsible for compensating the Contractor for the difference between the Capacity price in place at the termination of the contract and the interim PJM Capacity Auction price for a four-year period (or for the remaining term of the contract without giving effect to such termination, if less than four years). In the event the Entity wants to settle its obligations to the Contractor with a single lump sum payment, it will so notify the Contractor. The Contractor will then solicit and, if commercially practicable, enter into a replacement bilateral contract for the capacity, and the Entity will pay to the Contractor in a single lump sum an amount (discounted to present value at a rate of 3% per annum) equal to the excess, if any, of (a) the original contract price for the capacity, over (b) the replacement contract price for the capacity minus all administrative costs and expenses of Contractor associated with its entering into such replacement contract. If the replacement contract price for the capacity (after

giving effect to the aforesaid deductions) is more than the original contract price for the capacity, the benefit will accrue to the Contractor. Such payment will be made by the Entity within sixty days after the replacement contract effective date, after which interest will accrue on any unpaid amount at the rate provided above.

If a replacement contract is not available the single lump sum payment cannot be executed.

# EnergyAnswers International

ORIGINAL

October 8, 2009

Baltimore Regional Cooperative Purchasing Committee  
Baltimore County Maryland – Office of Budget and Finance  
Purchasing Bureau  
400 Washington Avenue, Room 148  
Towson, Maryland 21204-4665

Greetings:

In response to the Request for Proposal for Term Contract for Electric Power Purchase, Solicitation No. P-017, Energy Answers International, Inc. (Energy Answers) is pleased to submit our proposal response.

Energy Answers is developing a Renewable and Alternative Energy Project (Project) for the Baltimore region. The Project consists of a 120 MW combined heat and power plant and two or more separately located fuel production facilities.

The project will:

- Generate energy from renewable and alternative fuels.
- Increase regional recycling rates.
- Recover valuable materials for commercial reuse.
- Reduce land filling and associated greenhouse gas emissions.
- Redevelop a Brownfield site into an Eco-Industrial Park.
- Create over 180 permanent "green collar" jobs and opportunities for hundreds more.

The site of the Project is a 90 acre industrial "Brownfield" site located on the Fairfield Peninsula in Baltimore, Maryland. The site is the former home of the FMC pesticide and herbicide manufacturing operation which closed in 2008 and is in full compliance with a RCRA corrective remediation plan for managing contamination.

Energy Answers has submitted an application for a Certificate of Public Convenience and Necessity for the proposed Fairfield Renewable and Alternative Energy Power Plant, including an air permit application as required.



Energy Answers' proposed 120 MW Power Plant will operate as a renewable power producer that delivers electricity into the PJM Interconnection (PJM) system. Potential customers include future satellite facilities at the Eco-Industrial Park and wholesale purchasers, as well as other PJM utilities and energy marketing firms.

The Project has received the Interconnection Feasibility Study results and is currently in PJM queue position V1-033. The results of this study provide a preliminary estimate of costs and indicate potential upgrades needed for interconnection with PJM. The System Impact Study (SIS) was submitted in August, 2009 and the anticipated completion of the SIS is December 2009.

---

The Power Plant will have the added benefit of reducing the State of Maryland's greenhouse gas emissions by using non-fossil fuels for energy generation. The Power Plant will generate renewable energy from a Processed Refuse Fuel produced from a waste stream that would most likely be land filled otherwise. In this case, it will be combusted to generate electricity, while reducing greenhouse gases helping the state to achieve its renewable energy portfolio targets.

The Project will not only generate energy from a renewable fuel but it will help to displace other high footprint sources of greenhouse gas emissions associated with the trucking of municipal waste and the generation of methane emissions from land filling.

Energy Answers shares Baltimore's mission of diversifying its energy sources and with our environmentally advanced technologies and we look forward to working with the Baltimore Regional Cooperative Purchasing Committee to produce clean and green energy.

Sincerely,



Patrick F. Mahoney  
President and CEO

**ORIGINAL**

**Response to Request for Proposal  
for  
Term Contract for Electric Power Purchase  
Solicitation No. P-017**

**~~Due: October 9, 2009 by 2:00 pm~~**

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**Technical Proposal**

Submitted to:  
Baltimore Regional Cooperative Purchasing Committee  
Baltimore County Maryland  
Office of Budget and Finance  
Purchasing Bureau  
400 Washington Avenue, Room 148  
Towson, Maryland 21204-4665

Submitted by:

**EnergyAnswers**  
**International**

79 North Pearl Street  
Albany, New York 12207  
518-434-1227  
[www.energyanswers.com](http://www.energyanswers.com)

**October 2009**

## Introduction

Energy Answers International, Inc. (Energy Answers) is developing a Renewable and Alternative Energy Project (Project) for the Baltimore region. The Project consists of a base load 120 MW combined heat and power plant and two or more separately located fuel production facilities.

Energy Answers' Project is aligned with Maryland's Renewable Energy Portfolio Standard, enacted in May 2004 and revised in 2007 and 2008. The RPS requires electricity suppliers (all utilities and competitive retail suppliers) to use renewable energy sources to generate a minimum ~~portion of their retail sales. The renewables requirement increases gradually, ultimately reaching~~ a level of 20% from Tier 1 resources in 2022 and beyond. The Energy Answers Project will play an important role in meeting this very important objective in a timely, cost effective and environmentally sound manner.

The project will:

- Generate energy from renewable and alternative fuels.
- Increase regional recycling rates.
- Recover valuable materials for commercial reuse.
- Reduce land filling and associated greenhouse gas emissions.
- Redevelop a Brownfield site into an Eco-Industrial Park.
- Create over 180 permanent "green collar" jobs and opportunities for hundreds more.

The site of the Project is a 90 acre industrial "Brownfield" site located on the Fairfield Peninsula in Baltimore, Maryland with approximately 15 acres being utilized for the Power Plant. The site is the former home of the FMC pesticide and herbicide manufacturing operation closed in 2008. The site is in full compliance with a RCRA remediation plan for managing contamination.

Its location is ideal and Energy Answers has worked with the local community to garner significant local public support, in addition to receiving support from numerous government organizations. The Project has been enthusiastically endorsed by the Mayor of Baltimore, the two surrounding communities, the Baltimore Development Corporation (*see Support Letter, as Attachment 1*), the Maryland Department of the Environment, and many other local groups.

This Project is redeveloping vacant, contaminated land, and is consistent with existing industrial and maritime activity in the immediate vicinity, maintaining the peninsula as a heavy industrial area. Locating the Project at the vacant FMC site provides an economic stimulus for other industries to locate on the Fairfield Peninsula, and redevelopment of the site through the provisioning of lower cost power and/or steam to co-located and adjacent businesses. The Power Plant is expected to create approximately 300 construction jobs, 150 permanent jobs and hundreds of indirect jobs.

Energy Answers submitted an application for a Certificate of Public Convenience and Necessity in May 2009 for its proposed Fairfield Renewable Energy Project, including New Source Review

air permit application as required. The proposed facility has received local siting and zoning approval from the Baltimore Board of Municipal and Zoning Appeals.

Energy Answer's proposed 120 MW renewable fueled power plant will operate as a renewable power producer that delivers electricity into the PJM Interconnection (PJM) system. Potential contract customers include the future satellite facilities at the Eco-Industrial Park as well as wholesale purchasers, other PJM utilities, and energy marketing firms.

Presently, the Project completed the Interconnection Feasibility Study results and is PJM queue position V1-033. The results of this study provide a preliminary estimate of costs, and indicate ~~potential upgrades needed for interconnection with PJM. The System Impact Study (SIS) was~~ submitted August 2009 and the anticipated completion of the SIS is December 2009.

This area of Baltimore is, and has been, an industrial area for over 50 years. The Power Plant will be fueled by processed refuse fuel (PRF) and will effectively operate as a carbon sink that reduces potential greenhouse gas emissions in the region. It is also designed to combust supplementary fuels such as auto shredder residue, tire derived fuel, and shredded urban wood waste. All of the fuel will be processed off-site and delivered to the site via transfer trailer, rail or other means.

The Power Plant is also designed so that all fly and bottom ash will be available for beneficial reuse rather than for disposal at landfills. The project will use 4 spreader-stoker boilers which are designed to efficiently combust PRF and the supplemental fuels referenced. The exhaust will be treated to levels that meet or exceed current permitted levels for similar power plants by an air quality control system that includes fabric filters, regenerative selective catalytic reduction for NO<sub>x</sub> and CO, dry sorption injection for SO<sub>2</sub> and other acid gases, and carbon injection for mercury, dioxins, and furans. In fact, for particulate, oxides of nitrogen, sulfur dioxide, mercury and lead, the Power Plant will be establishing new lowest achievable emission rates that will set the standards for any new units.

The Power Plant will have the added benefit of reducing greenhouse gas emission's potential for the State of Maryland by using non-fossil fuels. The Power Plant will generate clean renewable energy from a waste that might otherwise be land filled or combusted primarily to reduce its volume. In this case, it is being combusted primarily to generate electricity reducing greenhouse gases, and will help the state achieve its renewable energy portfolio standards.

It will not only combust a renewable fuel, but will displace other sources that have higher greenhouse gas footprints; will reduce the emissions from trucking municipal waste; and will reduce methane emissions from otherwise land filling of municipal waste.

Energy Answers intends to begin construction on the new plant upon receipt of the necessary regulatory approvals which are anticipated in the Spring of 2010.

All Required Forms and Addendum are found at the end of this document as Exhibits.

- A. Bid Signature Cover Page
- B. Procurement Affidavit

- C. Minority Participation Affidavit and MBE/WBE Forms
- D. Amendment No. 1 Received and Initialed
- E. W-9 Form
- F. Contract Affidavit - Attachment B
- G. Insurance Forms - Attachment C

## **1.0 Statement of Compliance with Scope/Structure or Alternatives.**

Energy Answers' proposal for this **ELECTRIC POWER PURCHASE SOLICITATION (NO. P-017)** is intended to be fully compliant with the scope and structure outlined in Section 2 therein.

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Energy Answers is a fully qualified and experienced developer of resource recovery power generation facilities and its proposed Project will carry the capabilities necessary to supply Baltimore Regional Cooperative Purchasing Committee (BRCPC) with long term blocks of electric power (25MW base load for a 10 year term).

Energy Answers is prepared under this proposal to enter into and execute separate electric purchase and supply agreements with each of the BRCPC jurisdictions participating in this procurement.

The generation facility will be fueled by Processed Refuse Fuel (PRF) produced from municipal solid wastes, wood wastes, tire chips and/or auto shredder residue, approved State of Maryland Tier I or II green power sources. Rights to the capacity and renewable energy credits will be provided to the participating BRCPC jurisdictions.

The Project will be located at Baltimore's Fairfield Peninsula in a Baltimore Gas and Electric/PEPCO zone. Energy Answers has site control through a long-term lease option with site owner FMC and there will be no incumbent control or outside control of power generation other than through an Energy Answers' controlled special purpose project company.

A detailed and viable development plan is in place that fully supports the contract time frame of 48 months under Sections 2.4.5 and 2.7.

*(See attached Project Development Schedule as Attachment 2.)*

Site and zoning permits have been received and a construction application has been submitted under the CPCN permitting process. Fuel supply contracts for up to 75% of the facility capacity will be secured prior to commercial operation. Financing and commencement of construction will occur prior to December 31, 2010. Construction completion and start-up will occur in 2013.

Energy Answers will maintain sufficient investment grade credit or collateral to fund, develop, construct, and operate the Project under the required financing terms and will therein provide any agreed upon required guaranty and/or surety for those separate agreements upon or prior to the commencement of energy delivery to the participating BRCPC jurisdictions.

Finally, Energy Answers' sales transaction for the electric power supplied to BRCPC will be conducted with BRCPC's current Maryland licensed Electric Supply Service Provider.

## **2.0 Product and Market Experience.**

Energy Answers has owned, managed and operated three energy generating facilities, and is fully capable of operating and maintaining the Fairfield Renewable Energy Facility to its capacity standard.

### **Facility Operation Experience**

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Energy Answers is a highly qualified owner and operator of renewable energy facilities, with particularly relevant experience in prepared fuel systems.

#### **Renewable Energy Facility Experience**

##### ***SEMASS Resource Recovery Facility - Rochester, Massachusetts – 78 MW***

Energy Answers was the conceptual designer, developer, technology provider, co-operator (with Bechtel), general manager and ownership partner of SEMASS from 1988 until 1996 when the Facility was sold to American Ref-fuel (subsequently to Covanta Energy). It is instructive to note that all major environmental awards, such as the Ecological Society of America Corporate Award for Resource Recycling, were awarded during the period in which Energy Answers owned and operated the Facility.

During the period of Energy Answers involvement, the SEMASS base plant (2000 tpd) had long-term contracts with 37 public sector clients. In 1993, Energy Answers expanded (additional 1000 tpd) the SEMASS Facility to meet the solid waste management needs of 15 additional communities and private waste haulers in southeastern Massachusetts. SEMASS has proven to be a reliable, economically sound solution for the contracted communities. All power was sold to Commonwealth Energy (NSTAR).

##### ***Pioneer Valley Resource Recovery Facility - Springfield, Massachusetts – 9 MW***

In June 1999, Energy Answers acquired the 408 ton per day Pioneer Valley Resource Recovery Facility from Fluor-Daniel. Under our management and operation (1999-2007), the Facility processed in excess of 125,000 tons of solid waste per year and generated electricity to sell to Western Massachusetts Electric Company (WMECO). As part of its pre-acquisition activities, Energy Answers renegotiated long-term waste service agreements with ten municipalities and eliminated their put-or-pay clauses.

##### ***Pittsfield Resource Recovery Facility - Pittsfield, Massachusetts – 6 MW (280mm1b Steam)***

Under Energy Answers' management (1994-2007), the Pittsfield Resource Recovery Facility processed approximately 240 tons of solid waste per day, generating electricity and producing over 280 million pounds of steam annually for sale to Crane Paper Company, thereby replacing 3 million gallons of oil that would otherwise have been required. Crane has produced all of the United States currency paper stock for the U.S. Treasury since 1879, as well as currency paper stock for other nations.

### 3.0 Financial.

#### 3.1 Financial Statements

As a privately-held company, Energy Answers does not release financial information to third parties except on a need-to-know, confidential basis. If BRC PC decides to pursue negotiations with Energy Answers, Energy Answers will disclose, on a confidential basis, such financial information as is necessary to confirm the viability of our financing plan for the project.

#### 3.2 Corporate structure

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Energy Answers will provide overall project management and coordination of the Project. Some or all of the following Energy Answers' management team will be involved in the ongoing management of the Facility.

##### Key Principals and Project Staff

NAME	TITLE	EXPERIENCE
Patrick F. Mahoney	Board Director, Chairman and CEO	28 years
Michael McNerney	Vice President and Project Manager	16 years
Mary Ann Mahoney	Vice President	23 years
Kurt Krammer	Project Manager	25 years
S. Thyagarajan	Director, Urban and Regional Planning	13 years
Mark Green	Director of Development	12 years
Joseph W. McCarthy	Senior Project Engineer	11 years
Elona M. Cadman	Manager, Marketing & Administrative Services	15 years
Sean Mahoney	Project Development Manager	7 years
Steve Myrvang	Principal Architect	2 years
Laurie J. Coughlin	Research and Product Development Engineer	2 years

*See Organizational Chart as Attachment 3.*

#### 3.3 Guaranty and/or surety

Energy Answers is prepared, upon request and as necessary, to provide surety in the form of a Letter of Credit or other mutually acceptable form of security to the participating BRCPC jurisdictions upon commencement of energy delivery.

##### Strategic Partnerships

Energy Answers has developed strategic partnerships with many leading organizations, including construction companies, operating companies, institutional investors and equity partners such as:

- Bechtel
- Bank of America
- Constellation Energy
- UBS Securities

## Contractual Performance

Energy Answers has provided renewable energy services to Commonwealth Electric and Western Mass Electric. Without exception, Energy Answers has performed under these contracts without fault or payment of any liquidated damages, fines or penalties, or termination due to quality of work performed.

## 4.0 Customer References.

Over the past 28 years, EnergyAnswers has provided environmental services to more than 75 municipalities pursuant to short and long-term contracts. Without exception, Energy Answers has performed the services under these contracts without any payment of contractual liquidated damages, fines or penalties, or termination due to quality of work performed.

Ronald F. MacDonald  
Former Executive VP and General Manager  
Commonwealth Electric Company  
P: (787) 748-0049  
*Negotiated power sale contract with SEMASS.*

Michael Renzi  
Former Director of Customer Services  
Commonwealth Electric Company  
P: (508) 758-6507  
*Served as liaison between SEMASS and electrical utility.*

John K. Winkler  
Bureau of Waste Prevention Permit Section  
Chief, Department of Environmental  
Protection Southeast Region  
P: (508) 946-2779  
*Local resident and key regulator responsible for overseeing regulatory compliance of SEMASS and air quality permitting.*

George S. Wislocki  
President, Berkshire Natural Resources  
Council  
Berkshire Natural Resources Council, Inc.  
P: (413) 499-0596  
*Environmentalist, former member of the Pittsfield Massachusetts Solid Waste Commission and advocate of resource recovery as an alternative to landfilling.*

Richard D. Cutler, Naida L. Parker and  
Patricia E. Ryan  
Board of Selectmen  
Rochester, MA 02770  
P: (508) 763-3871  
*Host Community for SEMASS Resource Recovery Facility.*

Susan Thorneloe  
Senior Chemical Engineer, U.S. EPA  
Office of Research and Development Air  
Pollution Prevention and Control Division  
P: (919) 541-2709  
*Ms. Thorneloe is the Senior Project Officer for the EPA Research Applying Life-cycle Assessment to Integrated Waste Management.*



Georgia D. Chamberlain  
Former Conservation Commissioner &  
Cranberry Grower  
P: (508) 295-1913  
*Lives within 1 mile of SEMASS, has  
analyzed technology and supports resource  
recovery as an alternative to landfills.*

John DeVillars  
Regional Administrator for EPA Region 1  
and former Secretary for Executive Office of  
Environmental Affairs- MA  
US EPA - Region 1  
P: (617) 565-3400  
*Chief Environmental Official in  
Massachusetts during construction and  
initial operation.*

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## Corporate Awards and Recognition

Energy Answers has been recognized as a leader in the design, development, operation, expansion and improvement of highly efficient resource recovery facilities while continuously protecting the health and safety of our employees, communities and environment.

A few of the many awards Energy Answers has earned are listed below.

- ASME Small Combustion Facility of the Year Award - 2008
- ASME Small Combustion Facility of the Year Award - 2004
- SHARP Award – 2002
- Occupational Safety Award of Honor and a Massachusetts Statewide Safety Council Award - 2003
- Japan Waste Research Foundation Certification – 1999
- Corporate Award – 1996
- Excellence in Environmental Engineering Honor Award - 1993
- Ecological Society of America Corporate Award - 1993
- Golden Freight Car Award - 1990
- Special Recognition Award from the Southeastern Regional Planning and Economic Development District – 1989
- Power Magazine's Environmental Protection Award

## 5.0 Business Plan for Construction and Development of Generation Facility.

### 5.1 Type and capacity of generation

The Energy Answers' Facility will use PRF as its primary fuel source supplemented by shredded urban wood waste, tire derived fuel and auto shredder residue. The PRF will be derived from segregated, consumer post-recycled, municipal commercial and non-hazardous waste products. Energy Answers anticipates that over 70% of the PRF combined with the supplemental fuels will be from biogenic sources and therefore, qualify as a renewable fuel. Further, Energy Answers is in the process of confirming that the facility will be characterized as an open-loop biomass facility qualifying for Tier 1 renewable energy credits.

A Generation Interconnection Feasibility Study Agreement was submitted April 28, 2009 by Energy Answers International, Inc. to PJM Interconnection, LLC. Additionally, the System Impact Study was entered into on July 20, 2009. The System Impact Study identifies the system constraints relating to the New Service Requests being evaluated in the study and the Attachment Facilities, Local Upgrades, and Network Upgrades necessary to accommodate such New Service Requests. It is expected that the System Impact Study will be completed by December 31, 2009.

The Maximum Facility Gross Output of the generating unit will be 132MW (4 – 33MW generators) and will be a base load Capacity Resource. The fuel type is Processed Refuse Fuel and the planned date for the generating unit to be in service is July 1, 2013. Interconnection is expected to be the Pumphrey 115 KV station.

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An MOU has been signed between Energy Answers and FMC Corporation that will allow Energy Answers to maintain a fifty year lease at the site.

## **5.2 *Funding plan and marketing strategy***

Energy Answers International is currently working with Morgan Stanley and Popular Securities in the structuring and placement of senior tax-exempt and taxable solid waste disposal revenue bonds for the Renewable and Alternative Energy Project in Baltimore, Maryland at the FMC site. Additionally, Morgan Stanley has indicated that the Project should be an ideal candidate for a Department of Energy Loan Guarantee under Section 1705 of Title VII once the DOE begins accepting applications for this program in the fall. The purpose of the debt financing would be to finance, in part, the design, construction and startup of the Project.

Morgan Stanley and Popular Securities have had the opportunity to preliminarily review information provided by Energy Answers regarding the development of the Project. Morgan Stanley and Popular Securities are also familiar with Energy Answers' proposed technical and operational plan for the Project, including the use of the company's proven processed refuse fuel (PRF) and PRF to energy conversion technologies. Morgan Stanley has substantial experience with municipal solid waste-to-energy financings, including issues for the Connecticut Resources Recovery Authority, the City of Tampa (McKay Bay Project), the SEMASS Project and the Waste System Authority of Eastern Montgomery County. The Firm has also completed a wide variety of tax-exempt and taxable non-recourse energy project financings.

Morgan Stanley has indicated that it believes that the proposed capital structure for the Project financing is reasonable based on the following assumptions. First, it is assumed that the capital structure of the Project is comprised an acceptable percentage of subordinate debt/equity with the remainder of the financing funded by senior tax-exempt and taxable debt. Morgan Stanley understands that Energy Answers is in discussions with several parties to provide subordinate debt/equity for the Project and that Energy Answers also intends to apply for a renewable energy grant from the Treasury Department in 2011 assuming that it commences construction of the Project in 2010. It is currently believed that this grant will accelerate the repayment of the subordinate debt/equity once the Project is placed in service in 2013. The proposed capital structure also contemplates that the senior taxable debt will have a federal guarantee as security and may be structured as a loan or a bond. This is another provision of the American Recovery

and Reinvestment Act of 2009 (Stimulus Act) for renewable energy projects that will help significantly lower the cost of this debt. The federal guaranteed debt will have a long-term amortization that matches the term of the waste supply and power purchase agreements as well as the term of the debt issued without the federal guarantee.

Morgan Stanley has expressed their interest in serving as Project's investment banker for the placement of the senior debt portion of the Project financing and to work with Energy Answers on qualifying the Project for the various grants and guarantees available under the Stimulus Act.

The output of the proposed plant (capacity, energy, renewable energy credits, and ancillary services) will be sold through a combination of bilateral contracts (short and long term) coupled with direct participation in the PJM day ahead and hourly markets and the RPM Base Residual Auction. Discussions are currently underway with several entities interested in bilateral contracts for the plant output. It is anticipated that bilateral contracts will be in place for the majority of the plant output within the next 4-6 months.

### **5.3 Construction and development time line and schedule**

It is expected that construction will begin second quarter 2010 and reach completion by first quarter 2013.

*See attached Project Development Schedule as Attachment 2.*

### **5.4 Plan for PJM Membership in good standing, Maryland Supplier License, and EDI qualification with BGE**

The proposed plant is currently in the advanced design stage. The Generation and Transmission Interconnection Process with PJM is well underway. The Feasibility Study has been completed and the System Impact Study is underway. An interconnection route has been selected for construction of a single circuit underground 115,000 volt transmission line from the plant site to BGE's Pumphrey substation. Right of way issues are currently being secured and it is anticipated that all necessary agreements will be in place by March 2010. Necessary engineering drawings, permit applications and supporting paperwork is being prepared and will be filed with the appropriate State and Local Governmental Agencies in the next 90 days. Ongoing discussions with PJM and BGE are underway to proactively resolve any potential interconnection issues. Plans for PJM Membership as a generation owner are underway and membership will be obtained prior to plant start-up. A Maryland Suppliers License will be obtained several months prior to the start of the plant as well. EDI qualification with BGE will be handled approximately six to eight months prior to plant start-up.

### **5.5 Economic development footprint and the impact of reusing the site**

There are significant benefits associated with the development and operation of the proposed Fairfield Renewable Energy Project planned for the Fairfield area of Baltimore City. While the State of Maryland and the City of Baltimore will receive the largest benefit in terms of additional taxes and job creation, all electric rate payers will receive some benefit from more competition in

the electric energy and capacity markets. Following is a summary of the major benefits expected from development of the Power Plant:

- Creation of 184 new direct, full time positions with annual payroll including benefits that will exceed \$15,000,000.
- Construction expenditures over the next three years estimated at \$555,212,000.
- Significant economic and fiscal impacts upon the immediate neighborhoods of Curtis Bay and Brooklyn, City of Baltimore and State of Maryland.
- Estimated combined 10 year Direct and Indirect Positive Impact of \$372,165,000. In addition there will be another Positive Impact of \$33,699,000 for the construction period.
- The new power plant will provide the catalyst for redevelopment of the former FMC site and other properties in the Fairfield area of Baltimore City. Parcels will be made available for process-based business on the site close to the proposed plant and the plant will produce steam at a very competitive price for use on these sites.
- The entry of a new independently-owned power generation facility will provide more competitive electric energy and capacity in the constrained Baltimore area and help reduce capacity and overall energy costs for all electric buyers in the area.
- New source of Tier 1 or Tier 2 RECS in the Baltimore market area.
- New 115,000 volt underground transmission line from the BGE Pumphrey substation to the generation site. Potential for future supply of underground transmission in area which is currently served by 34,000 overhead lines.

As indicated in the summary above, the proposed plant has significant benefit to the electric customers in BGE territory along with the direct and indirect benefits. The introduction of low emission, privately owned generation into the Baltimore area should allow more competitive prices particularly for entities interested in obtaining longer term bilateral contracts.

*See attached Grant Thornton, Economic and Fiscal Impact Analysis as Attachment 4.*

## **6.0 MBE / WBE Business Utilization Plan.**

Energy Answers agrees the Contractor shall utilize its best efforts to involve certified Minority Owned Business Enterprises and Women-Owned Business Enterprises in its performance of this Agreement. Prior to contract award, the successful Offeror shall develop and deliver a plan to achieve such involvement, which shall be in effect throughout the term of this contract. The Contractor shall not be required to meet any numerical participation goals set pursuant to the MBE/WBE Program, since the establishment of any such goals is inappropriate at this stage of the development of the competitive electricity supply industry.

Nevertheless, the Contractor shall utilize its best efforts to advance the interests of minority and women-owned businesses in the competitive electricity supply industry in general and in its organization in particular, through mentoring programs and subcontracts with minority and women-owned businesses.

*Please see the Minority Participation Affidavit as Exhibit C.*

**BID SIGNATURE COVER PAGE**

**If your firm is not already receiving email notification of new solicitations and amendments, you may register for email notification on the County's web site at [www.baltimorecountyonline.info/purchasing](http://www.baltimorecountyonline.info/purchasing).**

**BALTIMORE COUNTY, MARYLAND  
PROCUREMENT AFFIDAVIT**

**A. AUTHORIZED REPRESENTATIVE**

I HEREBY AFFIRM THAT:

I am the [title] President & CEO and the duly authorized representative of [business] Energy Answers International, Inc. (the "Business") and that I possess the legal authority to make this Affidavit on behalf of myself and the Business for which I am acting.

**B. AFFIRMATION REGARDING BRIBERY CONVICTIONS**

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the Business, nor any of its officers, directors, partners, or any of its employees directly involved in obtaining or performing contracts with public bodies (as is defined in Section 16-101(f) of the State Finance and Procurement Article of the Annotated Code of Maryland), has been convicted of, or has had probation before judgment imposed pursuant to Article 27, Section 641 of the Annotated Code of Maryland, or has pleaded nolo contendere to a charge of, bribery, attempted bribery, or conspiracy to bribe in violation of Maryland law, or of the law of any other state or federal law, except as follows [indicate the reasons why the affirmation cannot be given and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of person(s) involved, and their current positions and responsibilities with the Business]:

\_\_\_\_\_

\_\_\_\_\_

**C. AFFIRMATION REGARDING OTHER CONVICTIONS**

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the Business, nor any of its officers, directors, partners, or any of its employees directly involved in obtaining or performing contracts with public bodies, has:

- (1) Been convicted under state or federal statute of a criminal offense incident to obtaining, attempting to obtain, or performing a public or private contract, fraud, embezzlement, theft, forgery, falsification or destruction of records, or receiving stolen property;
- (2) Been convicted of any criminal violation of a state or federal antitrust statute;
- (3) Been convicted under the provisions of Title 18 of the United States Code for violation of the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. §1961, et seq., or the Mail Fraud Act, 18 U.S.C. §1341, et seq., for acts arising out of the submission of bids or proposals for a public or private contract;
- (4) Been convicted of a violation of the State Minority Business Enterprise Law, Section 14-308 of the State Finance and Procurement Article of the Annotated Code of Maryland;
- (5) Been convicted of conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any law or statute described in subsection (1), (2), (3), or (4) above;
- (6) Been found civilly liable under a state or federal antitrust statute for acts or omissions in connection with the submission of bids or proposals for a public or private contract;

(7) Admitted in writing or under oath, during the course of an official investigation or other proceedings, acts or omissions that would constitute grounds for conviction or liability under any law or statute described above, except as follows [indicate reasons why the affirmations cannot be given, and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of the person(s) involved and their current positions and responsibilities with the Business, and the status of any debarment]:

---

#### **D. AFFIRMATION REGARDING DEBARMENT**

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the Business, nor any of its officers, directors, partners, or any of its employees directly involved in obtaining or performing contracts with public bodies, has ever been suspended or debarred (including being issued a limited denial of participation) by any public entity, except as follows [list each debarment or suspension providing the dates of the suspension or debarment, the name of the public entity and the status of the proceeding, the name(s) of the person(s) involved and their current positions and responsibilities with the Business, the grounds of the debarment or suspension, and the details of each person's involvement in any activity that formed the grounds of the debarment or suspension]:

---

#### **E. AFFIRMATION REGARDING DEBARMENT OF RELATED ENTITIES**

I FURTHER AFFIRM THAT:

(1) The Business was not established and it does not operate in a manner designed to evade the application of or defeat the purpose of debarment pursuant to Sections 16-101, et seq., of the State Finance and Procurement Article of the Annotated Code of Maryland; and

(2) The Business is not a successor, assignee, subsidiary, or affiliate of a suspended or debarred business, except as follows: [you must indicate the reasons why the affirmations cannot be given without qualification]:

---

#### **F. SUB-CONTRACT AFFIRMATION**

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the Business, has knowingly entered into a contract with a public body under which a person debarred or suspended under Title 16 of the State Finance and Procurement Article of the Annotated Code of Maryland will provide, directly or indirectly, supplies, services, architectural services, construction related services, leases of real property, or construction.

#### **G. AFFIRMATION REGARDING COLLUSION**

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the Business, nor any of its officers, directors, members or partners, nor any of its employees, have in any way:

(1) Agreed, conspired, connived, or colluded to produce a deceptive show of competition in the compilation of the accompanying bid or offer that is being submitted;

(2) In any manner, directly or indirectly, entered into any agreement of any kind to fix the bid price or price proposal of the bidder or offeror or of any competitor, or otherwise take any action in restraint of free competitive bidding in connection with the contract for which the accompanying bid or offer is submitted;

(3) Colluded with anyone to obtain information concerning the bid that would give the Business an unfair advantage over others.

#### H. POLITICAL CONTRIBUTION DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

The Contractor affirms that it is aware of, and will comply with, the provisions of Sections 14-101 through 14-108 of the Election Law Article of the Annotated Code of Maryland, which require that every person who makes, during any 12-month period, one or more contracts, with one or more Maryland governmental entities involving cumulative consideration, or at least \$100,000.00, shall file with the State Board of Elections certain specified information to include disclosure of attributable political contributions in excess of \$500 during defined reporting periods.

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#### I. CERTIFICATION OF CORPORATION REGISTRATION AND TAX PAYMENT

I FURTHER AFFIRM THAT: (See attached Foreign Corporation Qualification filed 10/01/09)  
New York

(1) The Business is a (Maryland) (   C   ) corporation, that it ( is ) (is not) registered in accordance with the Corporations and Associations Article of the Annotated Code of Maryland, that it ( is ) (is not) in good standing in the State of Maryland, and that it (has) (has not) filed all of its annual reports, together with filing fees, with the Maryland State Department of Assessments and Taxation, and that the name and address of its resident agent filed with the State Department of Assessments and Taxation is:

Name: The Corporation Trust Incorporated  
Address: 300 E. Lombard St., Suite 1400  
Baltimore, MD 21202  
(If none, so state).

(2) Except as validly contested, the Business has paid, or has arranged for payment of, all taxes due the State of Maryland and Baltimore County, and has filed all required returns and reports with the Comptroller of the Treasury, the State Department of Assessments and Taxation, and the Employment Security Administration, as applicable, and will have paid all withholding taxes due the State of Maryland prior to final settlement.

#### J. CONTINGENT FEES

I FURTHER AFFIRM THAT:

The Business has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee or agent working for the Business, to solicit or secure the Contract, and that the Business has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee or agent, any fee or other consideration contingent on the making of the Contract.

#### K. NONDISCRIMINATION IN EMPLOYMENT STATEMENT

I FURTHER AFFIRM THAT:

*During the performance of any contract awarded pursuant to the solicitation of which this affidavit is a part:*

- (1) The Business will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, national origin, marital status, sexual orientation, genetic information, or disability unrelated in nature and extent so as to reasonably preclude the performance of the employment, or because of the individual's refusal to submit to a genetic test or make available the results of a genetic test. The Business will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, age, national origin, marital status, sexual orientation, genetic information, or disability unrelated in nature and extent so as to reasonably preclude the performance of the employment, or because of the individual's refusal to submit to a genetic test or make available the results of a genetic test. Such action shall include, but not be limited to the following: employment, promotion, upgrading, demotion or transfer, rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Business agrees to post



in conspicuous places, available to employees and applicants for employment, notices to be provided by the owner setting forth provisions of this nondiscrimination clause.

(2) The Business will, in all solicitations or advertisements for employees placed by or on behalf of the Business, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, age, national origin, marital status, sexual orientation, genetic information, or disability unrelated in nature and extent so as to reasonably preclude the performance of the employment, or because of the individual's refusal to submit to a genetic test or make available the results of a genetic test.

(3) The Business shall send to each labor union or representative of workers with which the Business has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the owner, advising the said labor union or workers' representative of these commitments, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

~~(4) The Business shall furnish, if requested by the County, a compliance report concerning our employment practices and policies in order for the County to ascertain compliance with the special provisions of this affidavit concerning nondiscrimination in employment.~~

(5) In the event of the Business's noncompliance with the nondiscrimination clause of this affidavit, the contract may be canceled, terminated, or suspended in whole or in part, and the Business may be declared ineligible for further County work.

(6) The Business shall include the special provisions outlined herein pertaining to nondiscrimination in employment in every subcontract, so that such nondiscrimination in employment provisions shall be binding on each subcontractor or vendor.

#### L. FOREIGN CONTRACTS

I FURTHER AFFIRM THAT:

The Contractor affirms that it is aware of, and will comply with, the provisions of Sections 10-2-110 Article 10. Finance, Title 2 – Purchasing, Baltimore County Code 2003, which requires that prior to the award of a contract for services under the provisions of this title, and during the entire term of a contract award, the bidder or vendor shall disclose to the County whether any services covered by the bid or contract, including any subcontracted services, will be performed outside the United States. The disclosure shall be made to the Office of Budget and Finance, Purchasing Bureau.

#### M. ACKNOWLEDGMENT

I ACKNOWLEDGE THAT this Affidavit is to be furnished to the County and may be distributed to units of (1) Baltimore County; (2) the State of Maryland; (3) other counties or political subdivisions of the State of Maryland; (4) other states; and (5) the federal government. I further acknowledge that this Affidavit is subject to applicable laws of the United States and the State of Maryland, both criminal and civil, and that nothing in this Affidavit or any contract resulting from the submission of this bid or proposal shall be construed to supersede, amend, modify or waive, on behalf of Baltimore County, or the State of Maryland or any unit of the State of Maryland having jurisdiction, the exercise of any statutory right or remedy conferred by the Constitution and the laws of Maryland with respect to any misrepresentation made or any violation of the obligations, terms and covenants undertaken by the Business with respect to (a) this Affidavit, (b) the contract, and (3) other Affidavits comprising part of the contract.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Date:

10/1/09

By:

Patrick F. Mahoney

Name: Patrick F. Mahoney

Title: President & CEO

(Authorized Representative and Affiant)

RECEIVED OCT 11 1984  
DEPT OF ASSESSMENTS & TAXATION

FOREIGN CORPORATION QUALIFICATION

The undersigned Corporation for the purpose of qualifying pursuant to the provisions of Title 7 of the Corporations and Associations Article of the Annotated Code of Maryland, to do intrastate, interstate and foreign business as a foreign Corporation in the State of Maryland, hereby certifies to the State Department of Assessments and Taxation:

(A) That the name of the Corporation is Energy Answers International, Inc.

(B) The corporation was formed in the State of New York

(C) That the address of the Corporation is 79 N. Pearl St., 4th Fl., Albany, NY 12207

(D) That the name of the resident agent of the corporation in Maryland is \_\_\_\_\_

The Corporation Trust Incorporated

whose address is \_\_\_\_\_

300 East Lombard Street, Baltimore, MD 21202

(EVERY FOREIGN CORPORATION QUALIFIED IN MARYLAND IS REQUIRED TO NAME A MARYLAND AGENT)

(E) (OPTIONAL) That the address of the principal office of the Corporation in Maryland is \_\_\_\_\_

(F) That the Corporation (check appropriate response):

(1) ☐ has (2) ☒ has not done intrastate, interstate or foreign business in this State before qualification or registration as a foreign Corporation or after the qualification or registration was cancelled.

NOTE: If the box in Part (F) is checked indicating that the Corporation has done intrastate, interstate or foreign business in Maryland before registering or qualifying or after the registration or qualification has been cancelled; a penalty of \$200 must accompany this form in addition to the filing fee.

BY: \_\_\_\_\_

(Original signature of President or Vice President)

I hereby consent to my designation in this document as resident agent for this corporation.

SIGNED \_\_\_\_\_

Resident Agent

State of Maryland  
Department of  
Assessments and Taxation

Charter Division



Martin O'Malley  
Governor

C. John Sullivan, Jr.  
Director

Paul B. Anderson  
Administrator

Date: 10/01/2009

SAUL EWING, LLP  
LISA NOELL  
9TH FLOOR  
~~500 EAST PRATT STREET~~  
BALTIMORE MD 21202

THIS LETTER IS TO CONFIRM ACCEPTANCE OF THE FOLLOWING FILING:

ENTITY NAME : ENERGY ANSWERS INTERNATIONAL, INC.  
DEPARTMENT ID : F13250394  
TYPE OF REQUEST : QUALIFICATION  
DATE FILED : 10-01-2009  
TIME FILED : 03:53 PM  
RECORDING FEE : \$100.00  
EXPEDITED FEE : \$50.00  
POSTAGE FEE : \$5.00  
FILING NUMBER : 1000361998701530  
CUSTOMER ID : 0002335262  
WORK ORDER NUMBER : 0001778300

PLEASE VERIFY THE INFORMATION CONTAINED IN THIS LETTER. NOTIFY THIS DEPARTMENT IN WRITING IF ANY INFORMATION IS INCORRECT. INCLUDE THE CUSTOMER ID AND THE WORK ORDER NUMBER ON ANY INQUIRIES. EVERY YEAR THIS ENTITY MUST FILE A PERSONAL PROPERTY RETURN IN ORDER TO MAINTAIN ITS EXISTENCE EVEN IF IT DOES NOT OWN PERSONAL PROPERTY. A BLANK RETURN WILL BE MAILED BY FEBRUARY OF THE YEAR FOR WHICH THE RETURN IS DUE.

Charter Division  
Baltimore Metro Area (410) 767-1350  
Outside Metro Area (888) 246-5941

ENTITY TYPE: ORDINARY BUSINESS - STOCK  
STOCK: Y  
EFFECTIVE DATE: 10-01-2009  
STATE OF FORMATION: NEW YORK  
PRINCIPAL OFFICE: 79 N. PEARL ST.  
4TH FL.  
ALBANY NY 12207  
RESIDENT AGENT: THE CORPORATION TRUST INCORPORATED  
300 E LOMBARD ST.  
SUITE 1400  
BALTIMORE MD 21202

---

MINORITY PARTICIPATION AFFIDAVIT

A. AUTHORIZED REPRESENTATIVE

I HEREBY AFFIRM THAT:

I am the [title] President & CEO and the duly authorized representative of [business] Energy Answers International, Inc. (the "Business") and that I possess the legal authority to make this Affidavit on behalf of myself and the Business for which I am acting.

B. AFFIRMATION REGARDING MINORITY PARTICIPATION

I FURTHER AFFIRM THAT:

I am aware that, pursuant to the June 4, 2009 Executive Order of Baltimore County, Maryland, the following words have the meanings indicated.

~~(A) "Minority Business Enterprise" or "MBE" means a business enterprise that is owned, operated and controlled by one or more minority group members (African American, Hispanic American, Asian American, or Native American) who have at least 51% ownership and in which the minority group members have operational and managerial control, interest in capital and earnings commensurate with their percentage of ownership.~~

(B) "Women's Business Enterprise" or "WBE" means a business enterprise that is owned, operated and controlled by one or more women who have at least 51% ownership and in which the women have operational and managerial control, interest in capital and earnings commensurate with their percentage of ownership.

       The Business is a certified MBE with

☐ Maryland State Department of Transportation (MDOT)

☐ City of Baltimore

☐ Other Program: \_\_\_\_\_

       The Business is a certified WBE with

☐ Maryland State Department of Transportation (MDOT)

☐ City of Baltimore

☐ Other Program: \_\_\_\_\_

  X   The Business is not a certified MBE or WBE, however:

☐ The ownership of the Business consists of \_\_\_\_% minorities and \_\_\_\_% women (for a total of \_\_\_\_%), each of which has operational and managerial control, interest in capital and earnings commensurate with their percentage of ownership.

☒ The Business anticipates utilizing MBE or WBE subcontractors for 15% of the work on the contract.

☒ The Business is not a certified MBE or WBE nor is it 51% owned, operated and controlled by one or more minority group members or a woman.

☐ Due to the specific nature of work, this contract does not lend itself to subcontracting opportunities. Therefore, \_\_\_\_\_ is requesting a full waiver of the MBE/WBE requirement.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Date: 10/01/09

By: Patrick F. Mahoney

Name: Patrick F. Mahoney  
Title: President & CEO  
(Authorized Representative and Affiant)

N/A

**MINORITY CONTRACTOR PROJECT DISCLOSURE AND PARTICIPATION STATEMENT**  
**Baltimore County, Maryland**  
**Minority Owned and Controlled**  
(If any item does not apply, please mark "N/A")

1. PRIME CONTRACTOR - (NAME AND COMPLETE ADDRESS)

2. SOLICITATION NUMBER:

3. SOLICITATION TITLE:

4. MINORITY FIRM: (Check One) ☐ Individual ☐ Partnership ☐ Corporation ☐ Joint Venture

5. THE UNDERSIGNED MINORITY FIRM IS PREPARED TO PERFORM THE WORK/SERVICE HEREIN DESCRIBED IN CONNECTION WITH THE CONTRACT.

Item Number: \_\_\_\_\_ Work or Service: \_\_\_\_\_

Agreed Dollar Amount for Supplies/Service: \$ \_\_\_\_\_

Agreed Dollar Amount for Subcontracting: \$ \_\_\_\_\_

Contract  
Begin Date

Contract  
Completion Date

6. MINORITY FIRM'S SUPERVISION  
STAFF TO INCLUDE FOREMEN

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Cell Ph No.: \_\_\_\_\_

Title: \_\_\_\_\_

7. PERCENTAGE OF WORK PERFORMED BY OTHER THAN OWN WORK FORCE: (Include Name and Address of Company) \_\_\_\_\_ %

Name \_\_\_\_\_

Address \_\_\_\_\_

8. STATE THE TERMS OF ANY ORAL OR WRITTEN AGREEMENT(S) OR UNDERSTANDING(S) WITH NON-MINORITY PERSONS OR FIRMS RELATING TO ASSISTANCE, FINANCIAL OR OTHERWISE, TO BE PROVIDED BY SAID PERSONS OR FIRMS.

THE UNDERSIGNED MINORITY FIRM WILL ENTER INTO A CONTRACT WITH \_\_\_\_\_

(INSERT PRIME CONTRACTOR)

FOR THE WORK/SERVICE INDICATED ABOVE UPON THE PRIME CONTRACTOR'S EXECUTION OF A CONTRACT WITH BALTIMORE COUNTY. THE UNDERSIGNED MINORITY FIRM HAS BEEN REVIEWED AND APPROVED BY THE STATE OF MARYLAND OR THE CITY OF BALTIMORE AS A MINORITY BUSINESS ENTERPRISE AS OF \_\_\_\_\_

(Date)

(Certification Number)

SIGNATURE - MINORITY FIRM

Print or Type Name of Firm

Street Address

City State Zip Code Date

Federal Employer Identification Number (FEIN):

SIGNATURE - PRIME CONTRACTOR

Print or Type Name of Firm

Street Address

City State Zip Code Date

Federal Employer Identification Number (FEIN)

I AGREE TO THE TERMS AND CONDITIONS STATED ABOVE

N/A

**MINORITY CONTRACTOR PROJECT DISCLOSURE AND PARTICIPATION STATEMENT**

**Baltimore County, Maryland**  
**Woman Owned and Controlled**  
(If any item does not apply, please mark "N/A")

1. PRIME CONTRACTOR -- (NAME AND COMPLETE ADDRESS)	2. SOLICITATION NUMBER:
	3. SOLICITATION TITLE:

4. MINORITY FIRM: (Check One) ☐ Individual ☐ Partnership ☐ Corporation ☐ Joint Venture

5. THE UNDERSIGNED MINORITY FIRM IS PREPARED TO PERFORM THE WORK/SERVICE HEREIN DESCRIBED IN CONNECTION WITH THE CONTRACT.

Item Number: \_\_\_\_\_ Work or Service: \_\_\_\_\_

Agreed Dollar Amount for Supplies/Service: \$ \_\_\_\_\_  
Agreed Dollar Amount for Subcontracting: \$ \_\_\_\_\_

Contract Begin Date	Contract Completion Date

6. MINORITY FIRM'S SUPERVISION  
STAFF TO INCLUDE FOREMEN

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Cell Ph No.: \_\_\_\_\_

Title: \_\_\_\_\_

7. PERCENTAGE OF WORK PERFORMED BY OTHER THAN OWN WORK FORCE: (Include Name and Address of Company) \_\_\_\_\_ %

Name \_\_\_\_\_  
Address \_\_\_\_\_  
\_\_\_\_\_

8. STATE THE TERMS OF ANY ORAL OR WRITTEN AGREEMENT(S) OR UNDERSTANDING(S) WITH NON-MINORITY PERSONS OR FIRMS RELATING TO ASSISTANCE, FINANCIAL OR OTHERWISE, TO BE PROVIDED BY SAID PERSONS OR FIRMS.

THE UNDERSIGNED MINORITY FIRM WILL ENTER INTO A CONTRACT WITH \_\_\_\_\_  
(INSERT PRIME CONTRACTOR)  
FOR THE WORK/SERVICE INDICATED ABOVE UPON THE PRIME CONTRACTOR'S EXECUTION OF A CONTRACT WITH BALTIMORE COUNTY. THE UNDERSIGNED MINORITY FIRM HAS BEEN REVIEWED AND APPROVED BY THE STATE OF MARYLAND OR THE CITY OF BALTIMORE AS A MINORITY BUSINESS ENTERPRISE AS OF \_\_\_\_\_  
(Date) (Certification Number)

I AGREE TO THE TERMS AND CONDITIONS STATED ABOVE

SIGNATURE - MINORITY FIRM

Print or Type Name of Firm

Street Address

City State Zip Code Date

Federal Employer Identification Number (FEIN):

SIGNATURE - PRIME CONTRACTOR

Print or Type Name of Firm

Street Address

City State Zip Code Date

Federal Employer Identification Number (FEIN)

# **SCHEDULE FOR PARTICIPATION OF MINORITY BUSINESS ENTERPRISES**

**Baltimore County, Maryland  
Minority Owned and Controlled**

*(If any item does not apply, please mark "N/A")*

1. PRIME CONTRACTOR, NAME OF FIRM, ADDRESS (No., Street, City, State, Zip) TELEPHONE NO.

2. SOLICITATION TITLE

3. SOLICITATION NUMBER

4. TOTAL CONTRACT DOLLAR AMOUNT \$

5. LIST THE DATA REQUESTED FOR EACH MINORITY IN FIRM, INVOLVED IN THIS CONTRACT:

**a. MINORITY FIRM**

(Name of Firm)

Percentage of Total Contract

%

(Address)

(City)

(State)

(Zip)

Item No. and Description of work or service to be performed:

Contract Begin Date

Contract Completion Date

Agreed Dollar Amount for Supplies/Services: \$

Agreed Dollar Amount for Subcontracting: \$

**b. MINORITY FIRM**

(Name of Firm)

Percentage of Total Contract

%

(Address)

(City)

(State)

(Zip)

Item No. and Description of work or service to be performed:

Contract Begin Date

Contract Completion Date

Agreed Dollar Amount for Supplies/Services: \$

Agreed Dollar Amount for Subcontracting: \$

**c. MINORITY FIRM**

(Name of Firm)

Percentage of Total Contract

%

(Address)

(City)

(State)

(Zip)

Item No. and Description of work or service to be performed:

Contract Begin Date

Contract Completion Date

Agreed Dollar Amount for Supplies/Services: \$

Agreed Dollar Amount for Subcontracting: \$

6. MINORITY FIRMS TOTAL DOLLAR AMOUNT: \$

MINORITY FIRMS TOTAL PERCENTAGE: %

7. THIS FORM PREPARED BY:

Full Name

Title

Date

DO NOT WRITE BELOW THIS LINE -- BC USE ONLY

APPROVED: ☐ Yes ☐ No

DATE: \_\_\_\_\_

SIGNATURE -- County Minority Business Enterprise Officer



N/A

**SCHEDULE FOR PARTICIPATION OF MINORITY BUSINESS ENTERPRISES**

Baltimore County, Maryland  
Woman Owned and Controlled  
(If any Item does not apply, please mark "N/A")

1. PRIME CONTRACTOR, NAME OF FIRM, ADDRESS (No., Street, City, State, Zip) TELEPHONE NO.

2. SOLICITATION TITLE

3. SOLICITATION NUMBER \$ 4. TOTAL CONTRACT DOLLAR AMOUNT

5. LIST THE DATA REQUESTED FOR EACH MINORITY IN FIRM, INVOLVED IN THIS CONTRACT:

a. MINORITY FIRM

(Name of Firm)

Percentage of Total Contract

%

(Address)

(City)

(State)

(Zip)

Item No. and Description of work or service to be performed:

Contract Begin Date

Contract Completion Date

Agreed Dollar Amount for Supplies/Services: \$

Agreed Dollar Amount for Subcontracting: \$

b. MINORITY FIRM

(Name of Firm)

Percentage of Total Contract

%

(Address)

(City)

(State)

(Zip)

Item No. and Description of work or service to be performed:

Contract Begin Date

Contract Completion Date

Agreed Dollar Amount for Supplies/Services: \$

Agreed Dollar Amount for Subcontracting: \$

c. MINORITY FIRM

(Name of Firm)

Percentage of Total Contract

%

(Address)

(City)

(State)

(Zip)

Item No. and Description of work or service to be performed:

Contract Begin Date

Contract Completion Date

Agreed Dollar Amount for Supplies/Services: \$

Agreed Dollar Amount for Subcontracting: \$

6. MINORITY FIRMS TOTAL DOLLAR AMOUNT: \$

MINORITY FIRMS TOTAL PERCENTAGE: %

7. THIS FORM PREPARED BY:

Full Name

Title

Date

DO NOT WRITE BELOW THIS LINE - BC USE ONLY

APPROVED: ☐ Yes ☐ No

DATE:

SIGNATURE - County Minority Business Enterprise Officer

# MINORITY CONTRACTOR UNAVAILABILITY CERTIFICATE

## Baltimore County, Maryland

1. IT IS HEREBY CERTIFIED THAT THE FIRM OF \_\_\_\_\_

(Name of Firm)

on \_\_\_\_\_

Street Address \_\_\_\_\_

City \_\_\_\_\_

State \_\_\_\_\_

Zip Code \_\_\_\_\_

Date \_\_\_\_\_

CONTACTED THE MINORITY BUSINESS ENTERPRISE \_\_\_\_\_

(Name of Minority Business)

IS SEEKING TO OBTAIN A BID

Street Address \_\_\_\_\_

City \_\_\_\_\_

State \_\_\_\_\_

Zip Code \_\_\_\_\_

FOR WORK/SERVICE IN RELATION TO SOLICITATION NUMBER \_\_\_\_\_

2. ITEM NUMBER AND DESCRIPTION OF WORK/SERVICE REQUESTED:

3. FORM OF BID SOUGHT:

TO THE BEST OF MY KNOWLEDGE AND BELIEF, SAID MINORITY BUSINESS ENTERPRISE IS  
EITHER UNAVAILABLE FOR THE WORK/SERVICE IN RELATION TO SOLICITATION NUMBER  
\_\_\_\_\_ OR IS UNABLE TO PREPARE A BID FOR THE FOLLOWING REASON(S):

Name: \_\_\_\_\_

First \_\_\_\_\_

Middle \_\_\_\_\_

Last \_\_\_\_\_

Title: \_\_\_\_\_

Street Address \_\_\_\_\_

City \_\_\_\_\_

State \_\_\_\_\_

Zip Code \_\_\_\_\_

Signature \_\_\_\_\_

4. IT IS HEREBY CERTIFIED THAT THE FIRM OF \_\_\_\_\_

Name of Minority Firm

Street Address \_\_\_\_\_

City \_\_\_\_\_

State \_\_\_\_\_

Zip Code \_\_\_\_\_

was offered an opportunity to bid on solicitation number \_\_\_\_\_

on \_\_\_\_\_

(Date)

by \_\_\_\_\_

(Name)

(Title)

(Firm Name)

the above statement is a true and accurate account of why the firm of \_\_\_\_\_

(Name of Minority Firm)

did not submit a bid.

Name \_\_\_\_\_

Title \_\_\_\_\_

DFU



# BREPC

## Baltimore Regional Cooperative Purchasing Committee

Visit our web site at <http://baltometro.org>

**REQUEST FOR PROPOSAL  
TERM CONTRACT FOR ELECTRIC POWER PURCHASE  
SOLICITATION NO. P-017  
AMENDMENT NO. 01**

**REVISED Due Date: 10/09/09, Time: 2:00 PM**

**Direct all questions to the lead agency:**

Stephen P. Myer, CPPB, Senior Buyer

Phone: (410) 887-3884

Email: [smyer@baltimorecountymd.gov](mailto:smyer@baltimorecountymd.gov)

BALTIMORE COUNTY, MARYLAND

Office of Budget and Finance

Purchasing Bureau

400 Washington Avenue, Room 148

Towson, Maryland 21204-4665

Amendments to solicitations often occur prior to bid opening and sometimes within as little as 48 hours prior to bid opening. It is the potential vendor's responsibility to frequently visit the Purchasing web site to obtain amendments once they have downloaded a solicitation.

All original and duplicate bids and other attachments, related documents and correspondence, shall be typed or written in English. All prices/percentages and/or other monetary figures shall be in United States dollars.

**BIDDER CHECKLIST**

- ☐ Have you signed your bid?
- ☐ Have you signed the Procurement Affidavit?
- ☐ Have you filled out all applicable forms?
- ☐ Have you returned the original? (and required duplicate copies when required?)
- ☐ Have you signed and returned amendments?
- ☐ Have you included the bid bond, if required?

Handwritten initials: JFM

**BALTIMORE REGIONAL COOPERATIVE PURCHASING COMMITTEE  
REQUEST FOR PROPOSAL NO. P-017  
TERM CONTRACT FOR ELECTRIC POWER PURCHASE  
REVISED Due Date: 10/09/09, Time: 2:00 PM**

**AMENDMENT NO. 01**

1. Change the bid opening date and time to Friday, October 9, 2009 at 2:00 p.m.
2. The following firms attended the pre-proposal meeting on August 18, 2009:

Norman W. Lutkefedder	Solar Energy Focus, LLC	410-703-0730
<del>Laura Williams</del>	<del>Cesarie, Inc.</del>	<del>301-292-4427</del>
Drew Frank	Seven Seas Energy	
Pat Mahoney	Energy Answers	
Gary Kennedy	Wheelabrator Baltimore LP	
Liz Chuday	Highlands Production Company	
Nancy Cox	Blue Water Wind	
Kurt Kramer	Energy Answers	

3. Add the Minority Affidavit and W-9 from to the bid solicitation package. Both forms must be returned with the technical original proposal. Forms are attached to this amendment.
4. Replace the existing pages 16 and 17, the Insurance Provisions and Certificate of Insurance forms, with the new pages 16 and 17, the correct Insurance Provisions and Certificate of Insurance forms. Forms are attached to this amendment.
5. On Page 28, under Section 2.2, add the following jurisdiction:

Howard County Public Schools

Add the following to this section:

Baltimore County and BRCPC reserves the right to add or delete jurisdictions to this listing of participants.

6. The following questions were asked by prospective offerors:

Question 1: Can an out of state business qualified to do business in Maryland assign the contract to a new company in Maryland subsidized by the original company after the proposal/bid date?

Answer 1: See Paragraph 12 of the Sample Contract, on Page 41.

Question 2: Are the entity members of BRCPC subject to the state RPS?

Answer 2: Yes.

Question 3: Can we have a list identifying each member entity of the BRCPC, how much energy they will be committing to in the PPA, and the credit rating of each member entity?

Answer 3: Each entity has been contracting with PEPCO Energy Services since 2006 and has a sound credit rating. The group collectively shall contract for up to 25 MW round the clock.

DFM

Question 4: Why is the contract length in the RFP 10 years? Can we propose a contract length of 20 or 25 years and what considerations will it be given? How will the evaluation criteria handle a longer contract term proposal?

Answer 4: 10 years is appropriate within context of this group's agreed upon energy strategy, and we believe that it is a suitable time frame to be a positive impact on overall project given liquidity / credit requirements associated with longer-term purchases. Yes, longer-terms will be considered. How the seller secures longer-term purchase will have greater consideration.

---

Question 5: ~~We plan to submit more than one purchase option. Would you prefer it if we submit multiple price sheets, or should we complete one form showing multiple options?~~

Answer 5: Submit a price sheet for each pricing option.

Question 6: We understand that we will deliver all 25 MW of power to Pepco Energy Services (PES), and they will manage the metering of power for BRCPC. Will we invoice PES, or each entity member of BRCPC?

Answer 6: Delivery to PES, or successor supplier, i.e., holder of PJM subaccount will be affected via eschedule transaction in PJM emarket at contractually specified sink, e.g., BGE zone, or other delivery point as proposed. Metering is handled via retail delivery system of local utility and reported to BRCPC account by BGE. Specific metering is not relevant to the contract as it is delivered to a PJM subaccount held by a qualified retail supplier on behalf of BRCPC. Seller will issue one (1) invoice for monthly purchase to BRCPC's then current retail supplier of record who will issue a single payment per contract terms.

Question 7: Please explain who will be the counter-party in the Power Purchase Agreement: What is that party's credit rating? Will it stand behind subsidiary local buyers?

Answer 7: The counter-party, i.e., the financially responsible party, to the contract will be the BRCPC entities with delivery instructions to deliver to the qualified retail electric supplier of the BRCPC group.

Question 8: On page 32 section 12 Funding Out has language that creates a problem for building new wind generation. The language makes the project likely impossible to obtain financing. What contractual guarantees can be provided to overcome this funding out language?

Answer 8: Each jurisdiction's legislative branch approves a budget for each fiscal year. It is the intent of each jurisdiction to need electric power for its operational needs and each jurisdiction will budget for the cost of power for each fiscal year.

JFM

Question 9: Given the intermittent nature of renewable energy sources, we may not be able to deliver 25 MW at all times. We plan to construct enough nameplate capacity to meet BRCPC's 25 MW need for the majority of the time, given our standard capacity factors, however, there will be times when we are unable to deliver 25 MW. Do we need to supply firming power? Or is it acceptable to BRCPC that there will be times when we may be producing and therefore delivering less than 25 MW? The University PPA requires a fixed amount of energy and RECs be delivered to the Buyer each month. This is difficult given the RFP specifically allows for intermittent renewable energy. Please clarify.

Answer 9: BRCPC contemplates a firm deliver volume and quantity, i.e., the seller provides make up power to the extent its resources are short of contract volumes; however, BRCPC will entertain unit contingent offers, i.e., BRCPC will be responsible for such make up power through its PJM subaccount, with a suitable unit contingent discount.

---

Question 10: What will the committee be looking for and be emphasizing with the evaluations? Is there additional detail on the evaluation criteria? Please clarify how evaluators will score/rank proposals. How will the evaluation score low emissions compared relatively to no emissions? Is "no" emissions more important than "low", for example? Is there a point system or weighting of different sections of the responses?

Answer 10: The evaluation criteria is listed on Page 31, in Section 8 in order of importance. All information related to these criteria will be used in the evaluation process.

Question 11: Energy, capacity and REC's – There are not sections on the price proposal form to present pricing for each. How should we present prices since you are interested in all? Can we bid separately? How should we break out prices?

Answer 11: Respondents may respond with an all inclusive price that incorporates all aspects of energy, capacity and RECs requested, or may break out each component as it determines is appropriate. There is not a requirement to quote a single price; prices may be presented separately.

Question 12: What does it mean that generation facilities must have been located in the Baltimore Gas and Electric/PEPCO zones? What are your preferred delivery points? What are acceptable delivery points? Is delivery anywhere on the PJM grid acceptable?

Answer 12: BRCPC is seeking local resources physically located in the BGE and PEPCO zones due to their favorable effect on electric congestion into BGE zone; however, BRCPC will evaluate non-local resources that can be demonstrated to have a favorable impact on the BGE zone congestion. It would be helpful for respondent of non-local resources to provide an assessment of such favorable impacts on BGE zone. The preferred delivery point is PJM BGE zone, pnode ID 51292. BRCPC will entertain delivery to any other points in PJM. To the extent that respondent prefers delivery to another PJM point then BRCPC request that supplier provide an assessment of the expected congestion differential to BGE zone on a day-ahead market basis.

AM

Question 13: Would you accept a strike price based on MD node prices or DE Node prices instead of physical delivery? Would you prefer a contract for differences and how would it be structured?

Answer 13: BRCPC prefers a physical delivery product to BGE Zone but will entertain a financially settled product. "Strike Price" implies an option product which is not of primary interest to BRCPC; however, BRCPC will consider an option structure. BRCPC will consider MD or DE nodal settlement; however, BRCPC requests that respondent provide an assessment of expected congestion relative to BGE Zone on the day-ahead market for any non-BGE Zone offers. BRCPC would consider contracts for differences, but prefers physical delivery to BGE Zone. Any such Contract for Differences would be settled at the specified delivery point and market (day-ahead or real-time) set forth by the respondent:

---

Question 14: What is the EDI qualification with BGE? (3. Proposal Requirements 3.1.5.5)

Answer 14: EDI is not necessary to effect power delivery to BRCPC. Power will be delivered via PJM internal bilateral schedule at delivery point and type of market (real-time or day-ahead). Financial products will settle on same time frame as final PJM monthly billing.

7. BRCPC's membership contracts for energy consulting services with South River Consulting. Although they will not be voting members of the evaluation team, they will advise the team during the evaluation process.

Wheelabrator Baltimore LP is a client of South River Consulting. South River Consulting has fully disclosed this relationship to the BRCPC membership. No employee, official, or agent of South River Consulting or its parent company EnerNOC shall engage in any discussion at all about this RFP bid solicitation, the evaluation process, including but not limited to the proposals submitted and all contract negotiations, the award of contract, or the executed contract with any employee, official, or agent of Wheelabrator Baltimore LP.

8. All other terms and conditions remain the same.

**Taxpayer Identification Number (TIN) and Certification**  
(Substitute for IRS Form W-9)

**COMPLETE BOTH SIDES OF FORM**

Baltimore County, Maryland  
Office of Budget and Finance  
400 Washington Avenue, Room 148  
Towson, Maryland 21204

Certification of TIN and business name are required for all successful bidders prior to issuing a contract or purchase order. Completion of **SIDE 1** of this form is necessary to meet IRS regulations. All MBE/WBE vendors should also complete **SIDE 2**. For questions, call 410-887-3587.

**SIDE 1**

List your legal business name below, as shown on your income tax return. Sole proprietors should list their individual name as noted on your social security card. You may enter a business name on line 2. Other entities must list your business name as shown on Federal tax documents. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on the business name line (2). For limited liability companies (LLC) that are owned by an individual, the owner's name must be listed in the Name line (1) and the business name can be listed on the business name line (2). For limited liability companies that are corporations, partnerships, etc., enter the business name on Name line (1).

1. Name (as shown on your income tax return)

Energy Answers International, Inc.

2. Business name, if different from above

Address

79 N. Pearl Street

City

Albany

State

NY

ZIP Code

12207

Remittance Address, if different from above

City

State

ZIP Code

Contact Person

Title

Charles Gutermuth

Controller

Phone Number

Fax Number

( 518 ) 434 - 1227 Ext. 135

( 518 ) 436 - 6343

E-mail address

cgutermuth@energyanswers.com

Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1. For individuals, this is your social security number (SSN). For other entities, it is your employer identification number (EIN). Note, this is the TIN shown on your federal tax documents.

Social Security Number

--	--	--	--	--	--	--	--	--	--	--	--	--

OR

Employer Identification Number

1	4	-	1	7	1	8	9	3	3
---	---	---	---	---	---	---	---	---	---

☐ CHECK HERE IF YOU ARE EXEMPT FROM BACK-UP WITHHOLDING

☐ CHECK HERE IF YOU ARE TAX-EXEMPT, EXPLAIN:

Filing Status (Ownership) (LLC is not acceptable)

☐ Individual

☐ Sole Proprietor

☒ Corporation

☐ Partnership

☐ Other: (explain)

**CERTIFICATION:**

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. person (including a U.S. resident alien).

Signature of U.S. Person



Date

10/01/09



# SIDE 2

## MBE / WBE Certification

<b>Maryland Department of Transportation (MDOT)</b>	<b>City of Baltimore</b>
Certification #: <u>N/A</u>	Certification #: <u>N/A</u>
Certification Date: <u>      </u> / <u>      </u> / <u>      </u>	Certification Date: <u>      </u> / <u>      </u> / <u>      </u>
Pending: <u>                    </u>	Pending: <u>                    </u>

## Business Ownership (Check Only One)

<input type="checkbox"/>	G	Government Entity	<input type="checkbox"/>	O	Other: <u>                    </u>
<input type="checkbox"/>	H	Disabled	<input type="checkbox"/>	P	Non Profit
<input type="checkbox"/>	MA	Minority-owned, Not small business	<input type="checkbox"/>	W	Woman-owned, Small business
<input type="checkbox"/>	M	Minority-owned, Small business	<input type="checkbox"/>	WA	Woman-owned, Not small business
<input checked="" type="checkbox"/>	NS	Non-minority-owned, small business	<input type="checkbox"/>	X	Woman-owned, Minority, Small business
<input type="checkbox"/>	NL	Non-minority-owned, Large business	<input type="checkbox"/>	XA	Woman-owned, Minority, Not small business

## Type of Business/Organization

<input type="checkbox"/>	Association	<input type="checkbox"/>	Attorney
<input type="checkbox"/>	Government Entity	<input type="checkbox"/>	Educational Institution
<input type="checkbox"/>	Medical Service Provider	<input type="checkbox"/>	Non-profit Organization
<input checked="" type="checkbox"/>	Other: (explain) Waste to Energy	<input type="checkbox"/>	Financial Institution

## Ethnicity or Ownership (Check Only One)

<input type="checkbox"/>	A	Asian American	<input type="checkbox"/>	I	American Indian/Alaskan Native
<input type="checkbox"/>	B	African American	<input checked="" type="checkbox"/>	N	Non-minority
<input type="checkbox"/>	H	Hispanic American	<input type="checkbox"/>	O	Other Ethnic Group: <u>                    </u>

## Incorporation

Incorporation State: <u>New York</u>	OR	Date Business Started <u>03</u> / <u>02</u> / <u>1989</u>
--------------------------------------	----	---

## Signature

I certify that the information shown on this registration is true and correct. I will advise the Purchasing Bureau immediately, in writing, of any change affecting this data.		
Signature: <u>Eric A. Maloney</u>	Title: <u>President &amp; CEO</u>	Date: <u>10/01/09</u>

ATTACHMENT B  
CONTRACT AFFIDAVIT

A. AUTHORIZED REPRESENTATIVE

I HEREBY AFFIRM THAT:

~~I am the President and the duly authorized representative of Energy Answers~~  
International, Inc. (the "Business") and that I possess the legal authority to make  
this Affidavit on behalf of myself and the business for which I am acting.

B. BID/PROPOSAL AFFIDAVIT AFFIRMATIONS VALID

I FURTHER AFFIRM THAT:

To the best of my knowledge, information, and belief, each of the affirmations,  
certifications, or acknowledgments contained in that certain Procurement  
Affidavit dated October 1, 2009, and executed by (me) Patrick F. Mahoney for  
the purpose of obtaining the contract to which this Affidavit is attached remains  
true and correct in all respects as if made as of the date of this Contract Affidavit  
and as if fully set forth herein.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF  
PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND  
CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND  
BELIEF.

Date: October 1, 2009

By:   
Patrick F. Mahoney  
President  
(Authorized Representative and Affiant)



# BALTIMORE COUNTY, MARYLAND

## INSURANCE PROVISIONS

### 1. GENERAL REQUIREMENTS

#### 1.1 Coverages Required:

Unless otherwise required by the specifications or the contract, the Contractor/Vendor shall purchase and maintain the insurance coverages listed herein.

#### 1.2 Certificate of Insurance:

Before starting work on the contract or prior to the execution of the Contract on those bid, the Contractor/Vendor shall provide Baltimore County, Maryland with a Certificate of Insurance provided by the County, or an exact replica thereof, evidencing the required coverages.

#### 1.3 Baltimore County as Insured:

The coverage required, excluding Worker's Compensation and Employers' Liability and Medical Malpractice Liability/Professional Liability/Errors and Omissions Liability, must include Baltimore County, Maryland and its agents, employees, officers, directors, and appointed and elected officials as an additional insured.

#### 1.4 Contractor's/Vendor's Responsibility:

The providing of any insurance herein does not relieve the Contractor/Vendor of any of the responsibilities or obligations the Contractor/Vendor has assumed in the contract or for which the Contractor/Vendor may be liable by law or otherwise.

#### 1.5 Failure to Provide Insurance:

Failure to provide and continue in force the required insurance shall be deemed a material breach of the contract.

### 2. INSURANCE COVERAGES

#### 2.1 General Liability Insurance

##### 2.1.1 Minimum Limits of Coverage:

Personal Injury Liability and Property Damage Liability Combined Single Limit - \$500,000 each occurrence

2.1.2 Such insurance shall protect the Contractor/Vendor from claims which may arise out of, or result from, the Contractor's/Vendor's operations under the contract, whether such operations be by the Contractor/Vendor, any subcontractor, anyone directly or indirectly employed by the Contractor/Vendor or Subcontractor, or anyone for whose acts any of the above may be liable.

#### 2.1.3 Minimum Coverages to be Included:

- (a) Independent Contractor's coverage;
- (b) Completed Operations and Products Liability coverage; and
- (c) Contractual Liability coverage.

#### 2.1.4 Damages not to be Excluded:

Such insurance shall contain no exclusions applying to operations by the Contractor/Vendor or any Subcontractor in the performance of the Contract including but not limited to: (a) Collapse of, or structural injury to, any building or structure; (b) Damage to underground property; or (c) Damage arising out of blasting or explosion.

#### 2.2 Automobile Liability Insurance

##### 2.2.1 Minimum Limits of Coverage:

Bodily Injury Liability and Property Damage Liability  
Combined Single Limit - \$500,000  
any one accident

##### 2.2.2 Minimum Coverages to be Included:

Such insurance shall provide coverage for all owned, non-owned and hired automobiles.

#### 2.3 Workers' Compensation and Employers' Liability Insurance

Such insurance must contain statutory coverage, including Employers' Liability insurance with limits of at least:

Bodily Injury by Accident - \$250,000 each accident  
Bodily Injury by Disease - \$500,000 policy limit  
Bodily Injury by Disease - \$250,000 each employee

#### 2.4 Valuable Papers and Records Coverage and Electronic Data Processing (Data and Media) Coverage

##### Minimum Limits of Coverage:

\$100,000 Per Claim and Each Occurrence  
\$100,000 in the Aggregate

#### 2.5 Other

Such other insurance in form and amount as may be customary for the type of business being undertaken by the Contractor/Vendor.



BALTIMORE COUNTY, MARYLAND  
CERTIFICATE OF INSURANCE

THIS FORM MUST BE COMPLETED BY A LEGALLY AUTHORIZED REPRESENTATIVE OF INSURANCE COMPANY OR INSURANCE AGENCY.

THE CONTRACTOR/VENDOR MUST MAINTAIN THE INSURANCE COVERAGES REQUIRED UNDER THE TERMS AND CONDITIONS OF THIS CONTRACT WHILE THIS CONTRACT IS IN EFFECT INCLUDING RENEWAL AND EXTENSION TERMS.

TO: BALTIMORE COUNTY, MARYLAND  
PURCHASING BUREAU  
400 Washington Avenue, Room 148  
Towson, Maryland 21204

P-017  
Solicitation/Contract/Purchase Order No.

Energy Answers International, Inc.  
Name of Contractor/Vendor

THIS IS TO CERTIFY THAT:

(1) The undersigned has received and reviewed the INSURANCE PROVISIONS of the above-numbered Solicitation/Contract/Purchase Order No.; and

(2) The following insurance has been issued, is in force, and conveys all the rights and privileges afforded under the policy and as required under the Solicitation/Contract/Purchase Order; and

Type of Insurance	Insurance Company	Policy Numbers	Amt. Of Coverage
General Liability	Federal Insurance Co.	3711-29-24	\$1,000,000 per occurrence
Automobile Liability	Federal Insurance Co.	7354-95-96	\$1,000,000 per accident
Worker's Compensation and Employers' Liability	Federal Insurance Co.	7839-08-68	Statutory limits
Valuable Papers and Electronic Data	Federal Insurance Co.	3711-29-24	\$100,000 blanket limit
Other			

(3) General Liability, Automobile Liability and Valuable Papers and Electronic Data insurance coverage shall name Baltimore County, Maryland and its agents, employees, officers, directors, and appointed and elected officials as an additional insured.

(4) The Worker's Compensation and Employers' Liability insurance coverage shall name Baltimore County, Maryland and its agents, employees, officers, directors, and appointed and elected officials as a certificate holder.

THE UNDERSIGNED AGREES that should any of the insurance coverages indicated above be cancelled, not renewed, or changed in such a manner as would make the coverage not in conformity with the provisions mentioned above, thirty (30) days advance written notice shall be given to BALTIMORE COUNTY, MARYLAND at the address shown above; EXCEPT IN THE CASE OF NON-RENEWAL, notice shall be given as soon as known, if that be less than thirty (30) days, but in no event, less than (10) days. This notice requirement shall be reduced to only ten (10) days in case of cancellation for non-payment of insurance premiums for the coverages certified. All notice requirements shall identify the Contractor/Vendor and the number of the Solicitation/Contract/Purchase Order No.

The Moore Insurance Agency, Inc.  
Name of Insurance Company or Agency

15 25th Street

Address

Watervliet, NY 12189

City, State, Zip Code

518-273-9501

Area Code/Telephone No.

Signature of Authorized Representative of Insurance Company or Agency

Philip J. Moore  
Type/Print Name

10/6/2009

Date

This Certificate of Insurance was adopted to eliminate the uncertainty regarding different forms of such documents and to reduce clerical errors. Insurer may provide ACORD Certificates of Insurance also reflecting policy duration and amount of coverage, however, submission of an ACORD form does not satisfy the requirements of this procurement, and in the event of any conflict between this Certificate of Insurance form and any ACORD forms, the terms and conditions of this Baltimore County Certificate of Insurance form shall prevail.

ACORD

## CERTIFICATE OF LIABILITY INSURANCE

OP ID DD  
ENERG-2

DATE (MM/DD/YYYY)

10/06/09

<b>PRODUCER</b> The Moore Insurance Agency Inc 15 25th Street Watervliet NY 12189 Phone: 518-273-9501		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
<b>INSURED</b> Energy Answers International, Inc. 79 N. Pearl St. Albany NY 12207		<b>INSURERS AFFORDING COVERAGE</b>	<b>NAIC #</b>
		INSURER A: Federal Insurance Co.	20281
		INSURER B:	
		INSURER C:	
		INSURER D:	
		INSURER E:	

## COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.


NR	ADD'L	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
A	X	<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC	3588-89-60	01/01/09	01/01/10	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMPROP AGG \$ 1,000,000
A	X	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	7354-95-96	01/01/09	01/01/10	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
		<b>GARAGE LIABILITY</b> <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC \$ AUTO ONLY: AGG \$
A		<b>EXCESS / UMBRELLA LIABILITY</b> <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE <input checked="" type="checkbox"/> RETENTION \$10,000	79863935	01/01/09	01/01/10	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000 \$ \$ \$
A		<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under SPECIAL PROVISIONS below Y/N <input checked="" type="checkbox"/> N	78390868	01/01/09	01/01/10	WC STATUTORY LIMITS <input checked="" type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 500,000 E.L. DISEASE - EA EMPLOYEE \$ 500,000 E.L. DISEASE - POLICY LIMIT \$ 500,000
A		<b>OTHER</b> Valuable Papers and Electronic	7354-95-96	01/01/09	01/01/10	Blanket \$100,000 Deduct. \$1,000

## DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

Baltimore County, Maryland, and its agents, employees, officers, directors, and appointed and elected officials are added as an additional insured with respect to general and automobile liability and as a loss payee with respects to valuable papers and electronic data processing coverage. 10 day cancellation applies for non-payment of premium

## CERTIFICATE HOLDER

## CANCELLATION

<b>BALTIM-</b> Baltimore County Maryland Purchasing Bureau 400 Washington Avenue Room 148 Towson MD 21204	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE 
--	--

## IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

## DISCLAIMER

This Certificate of Insurance does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

---

# Attachments



September 30, 2009

Mr. Stephen P. Myer  
Baltimore County Bureau of Purchases  
Office of Budget and Finance  
Purchasing Bureau  
400 Washington Avenue, Room 148  
Towson, MD 21204

---

RE: Baltimore Regional Cooperative Purchasing Committee  
Electric Power Purchase, Solicitation P-017

Dear Mr. Myer:

I understand that the Board of the Baltimore Regional Cooperative Purchasing Committee is encouraging development of additional power generation in the region and state, and is soliciting proposals for long term power purchase agreements with new providers of traditional and renewable power.

The City of Baltimore is enthusiastic about Energy Answer's innovative renewable heat and power project being proposed for the Fairfield peninsula. This project is aligned with the Fairfield Urban Renewal Plan's economic development and sustainability objectives. The proposed clean energy power plant will be sited on a vacant brownfields site providing an opportunity to revitalize key industrial real estate and could provide an economic stimulus for other industries to locate on the Fairfield area.

In 2004, the peninsula was designated an urban renewal area with the primary purpose to promote environmentally responsible industrial development, facilitate redevelopment of vacant or underutilized land and assure consistent development with existing industrial and maritime activity, maintaining the peninsula as a heavy industrial area.

The Energy Answer's project could provide 120 megawatts of renewable alternative energy and create approximately 300 construction jobs, 150 permanent jobs and hundreds of indirect jobs.

Energy Answers has an on-going proactive dialogue with the communities in the vicinity of the project, creating an advisory group of community, government and developer representatives to share information and provide feedback.



Mr. Stephen P. Myer  
Baltimore County Bureau of Purchases  
September 30, 2009  
Page 2

If you have additional questions regarding Baltimore Development Corporation's  
~~contact with Energy Answers, please feel free to speak to my staff person Larysa Salamacha.~~  
She can be reached at 410-837-9305, [lsalamacha@baltimoredevelopment.com](mailto:lsalamacha@baltimoredevelopment.com).

Sincerely,

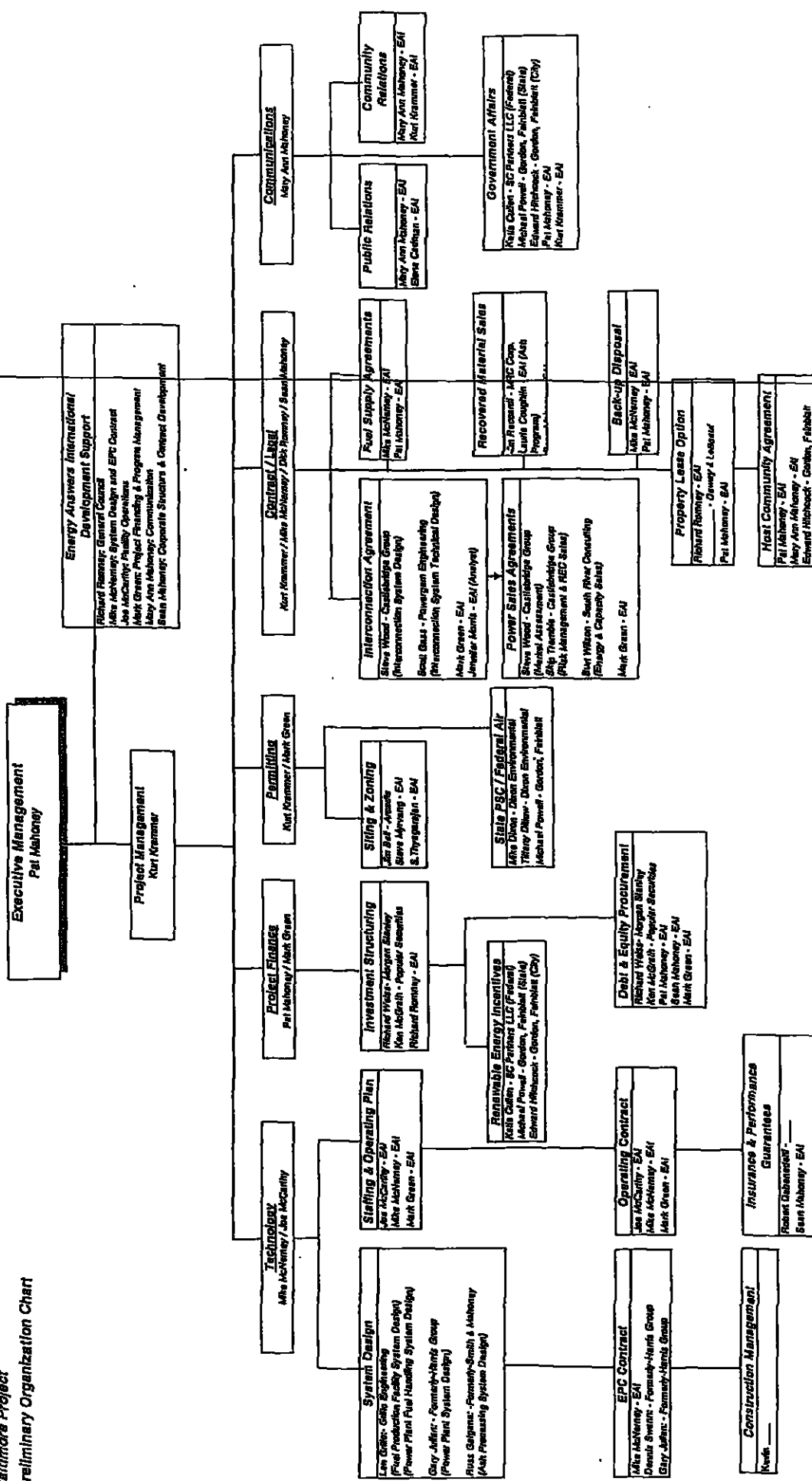
  
M. J. Brodie  
President

cc: Patrick F. Mahoney, President, Energy Answers International, Inc.

FAIRFIELD RENEWABLE ENERGY PROJECT AT THE FMC PROPERTY, FAIRFIELD PENINSULA, BALTIMORE, MD  
 ENERGY ANSWERS INTERNATIONAL  
 CONCEPTUAL SCHEDULE OF DEVELOPMENT FROM PROJECT CONCEPT TO POWER PLANT STARTUP

ACTIVITY	2004				2005				2006				2007				2008				2009				2010				2011				2012				2013				2014			
	FIRST	SECOND	THIRD	FOURTH	FIRST	SECOND	THIRD	FOURTH	FIRST	SECOND	THIRD	FOURTH	FIRST	SECOND	THIRD	FOURTH	FIRST	SECOND	THIRD	FOURTH	FIRST	SECOND	THIRD	FOURTH	FIRST	SECOND	THIRD	FOURTH	FIRST	SECOND	THIRD	FOURTH												
MASTER PLAN AND FAIRFIELD RENEWABLE SITE APPROVAL																																												
FINAL MASTER PLAN WITH SATELLITE INDUSTRIES																																												
CITY ZONING PERMIT																																												
CPON PERMIT PROCESS; AIR PERMIT																																												
BUILDING PERMIT																																												
SECURE LONG-TERM WASTE CONTRACTS																																												
SECURE AGREEMENTS FOR FUEL PROCESSING SITES																																												
SECURE ENERGY SALES AGREEMENTS																																												
PRELIMINARY FAIRFIELD RENEWABLE SITE AND ENGINEERING PLANNING																																												
FINAL PROJECT DESIGN AND CONTRACT DOCUMENTS																																												
BID PROCESS AND CONTRACTS LETTING																																												
STRUCTURE AND CLOSE PROJECT FINANCING																																												
FAIRFIELD RENEWABLE CONSTRUCTION AND SITE IMPROVEMENTS																																												
FAIRFIELD RENEWABLE OPERATIONS SHUTDOWN AND FINAL START-UP																																												

Energy Answers International  
Baltimore Project  
Preliminary Organization Chart



*Energy Answers International, Inc.*  
*Economic and Fiscal Impact Analysis*  
*Baltimore, Maryland Project*

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*April 30, 2009*



Grant Thornton

**Energy Answers International, Inc.**  
**Economic and Fiscal Impact Analysis**  
**Baltimore, Maryland Project**

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## I. PROJECT DESCRIPTION

Energy Answers International, Inc. ("Energy Answers") was formed in 1981 to provide integrated solid waste management and renewable energy solutions through the development and implementation of environmentally and economically sound resource recovery technologies. Over a period of 27 years, Energy Answers has designed, developed, owned and/or operated a number of unique and innovative resource recovery facilities with a constant goal of 'zero disposal' and a corporate philosophy based on the principles of sustainable development. Today, Energy Answers continues in its commitment to resource recovery through its development of renewable energy and zero disposal projects worldwide.

Energy Answers is headquartered in Albany, New York, and has subsidiary companies with offices in St. Croix, U.S. Virgin Islands (Energy Answers International LLC), and in Dublin, Ireland (Energy Answers International Limited).

Energy Answers is proposing to build a resource recovery project consisting of fuel processing facilities and a renewable fuel power plant in the Baltimore, Maryland area. The Company anticipates that the combined facilities will result in the creation of 184 new direct, full-time positions of which the Company anticipates that 144 and 40 full-time jobs will be created at the Power Plant and Fuel Processing facilities, respectively. In addition, the Company anticipates that the annual payroll including benefits will exceed \$15,000,000 for these positions in total. Furthermore, the facilities will be constructed over a three year period and are estimated to cost \$555,212,000.

The following is a summary of the estimated project costs of the combined facilities as provided by Energy Answers. These cost estimates were utilized throughout the course of calculating the direct, indirect and induced economic and fiscal impacts.

Estimated Cost of Building	\$ 62,339,000
Estimated Cost of Machinery and Equipment	280,000,000
Estimated Cost of Leasehold Improvements	103,423,000
Estimated Cost of Other Assets	<u>109,450,000</u>
Estimated Total Project Costs of combined facilities	\$555,212,000

The following is a summary of the estimated project costs of the power plant as provided by Energy Answers. These cost estimates were utilized throughout the course of calculating the direct, indirect and induced economic and fiscal impacts. The costs outlined below are included in the total costs provided above.

Estimated Cost of Building	\$ 50,269,000
Estimated Cost of Machinery and Equipment	223,463,000
Estimated Cost of Leasehold Improvements	85,518,000
Estimated Cost of Other Assets	<u>90,211,000</u>
Estimated Total Project Costs of power plant	\$449,461,000

Energy Answers' proposed plan is estimated to have significant economic and fiscal impacts upon the immediate neighborhoods of Curtis Bay and Brooklyn, City of Baltimore and the State of Maryland. The following report estimates and analyzes various aspects of the project and its potential contribution to the overall economic and fiscal budgets of the state and local economies. It must be noted that all of the figures represented in this report are estimates based upon the most up to date data gathered from Energy Answers, third party contributors and State of Maryland sources. Actual results will vary depending upon changes in project scope, tax rates and ultimate employment levels.

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## II. SUMMARY CHARTS

The following charts summarize the estimated impacts of the Energy Answers project on an on-going, operational basis along with the impacts of the project's construction.

Chart 1- Annual Economic Impact Summary

Energy Answers-Combined	Community	City	State
Output	\$278,942,000	\$308,030,000	\$353,790,000
Jobs			
Direct	184	184	184
Indirect/Induced	242	383	599
Total	426	567	783
Compensation			
Direct	\$15,542,000	\$15,542,000	\$15,542,000
Indirect/Induced	\$4,564,000	\$7,619,000	\$14,320,000
Total	\$20,106,000	\$23,161,000	\$29,862,000
Energy Answers-Power Plant	Community	City	State
Output	\$218,302,000	\$241,066,000	\$276,879,000
Jobs			
Direct	144	144	144
Indirect/Induced	189	300	469
Total	333	444	613
Compensation			
Direct	\$12,510,000	\$12,510,000	\$12,510,000
Indirect/Induced	\$3,673,000	\$6,133,000	\$11,526,000
Total	\$16,183,000	\$18,643,000	\$24,036,000
Construction Period	Community	City	State
Output	\$67,810,000	\$80,314,000	\$86,093,000
Jobs			
Direct	406	406	406
Indirect/Induced	90	173	234
Total	496	579	640
Compensation			
Direct	\$18,811,000	\$18,811,000	\$18,811,000
Indirect/Induced	\$3,926,000	\$6,578,000	\$9,827,000
Total	\$22,737,000	\$25,389,000	\$28,638,000



Chart 2- Fiscal Impact Summary

<u>Energy Answers Combined - 10 Year Impact</u>	<u>Total</u>
Direct Individual State Income Tax	\$6,045,000
Direct Real Property Tax	TBD
Direct Personal Property Tax	TBD
Indirect Business Tax and Payments	\$316,918,000
Indirect Corporate Profits Tax and Payments	\$42,400,000
Indirect Personal Tax and Payments	\$6,160,000
Indirect Social Insurance Tax and Payments	\$642,000
Grand Total	\$372,165,000
<u>Energy Answers Power Plant - 10 Year Impact</u>	<u>Total</u>
Direct Individual State Income Tax	\$4,872,000
Direct Real Property Tax	TBD
Direct Personal Property Tax	TBD
Indirect Business Tax and Payments	\$248,020,000
Indirect Corporate Profits Tax and Payments	\$33,190,000
Indirect Personal Tax and Payments	\$4,820,000
Indirect Social Insurance Tax and Payments	\$503,000
Grand Total	\$291,405,000
<u>Construction Period - 3 Year Impact</u>	<u>Total</u>
Direct Sales/Use Taxes	\$24,129,000
Direct Individual State Income Tax	\$2,520,000
Indirect Business Tax and Payments	\$4,923,000
Indirect Corporate Profits Tax and Payments	\$1,278,000
Indirect Personal Tax and Payments	\$738,000
Indirect Social Insurance Tax and Payments	\$111,000
Grand Total	\$33,699,000

### III. ASSESSMENT METHODOLOGIES

Grant Thornton LLP ("Grant Thornton") was engaged by Energy Answers to provide a detailed analysis that would provide state and local officials with information regarding the impacts that the proposed resource recovery project may have upon the economies of the State of Maryland, City of Baltimore and the communities of Curtis Bay & Brooklyn. Grant Thornton utilized a variety of data sources and methodologies to accomplish the objectives of this assessment. These techniques were selected based upon their effectiveness in estimating economic and fiscal outcomes. The sources of data used to complete our assessment included Energy Answers' personnel, the Maryland Comptroller's Office, City of Baltimore, The Minnesota IMPLAN Group, Inc. ("MIG"), as well as other data sources.

We began our analysis by compiling data regarding the direct economic impact of the proposed project upon the State economies. This data consisted of current best estimates of direct employment, direct payroll, direct output, and direct investment in construction and operation of the new facility. This information enabled Grant Thornton to identify the primary or immediate effects of the project upon the economies.

Grant Thornton then estimated the economic impacts of the Energy Answers' project based upon annual output and employment levels. Specifically, this analysis measures the anticipated economic impacts of the Energy Answers' project using the MIG input-output economic system. Examples of economic activity include normal operating expenditures, purchases from local vendors, and employee spending.

In an input-output analysis of new economic activity it is useful to distinguish three types of expenditure effects; direct, indirect and induced.

#### Direct Effects

Direct effects to the economy are production changes associated with the immediate effects or final demand changes attributable to the proposed resource recovery project. For example, the purchase of Energy Answers' recovered materials by a local supplier would constitute a direct effect.

#### Indirect Effects

Indirect effects are production changes in backward-linked industries caused by the changing input needs of directly affected industries. For example, a tier I supplier's cost of hiring a truck driver to deliver raw materials to an Energy Answers' facility would be considered an indirect effect, as would that truck driver's purchase of gas to use in their deliveries. Such "upstream" purchases affect the economic status of other local merchants and workers.

#### Induced Effects

Induced effects are the changes in regional household spending patterns caused by changes in the income generated from the direct and indirect effects of the Energy

Answers' project. For instance, the increased revenues received by the delivery driver and the gas station owner would then be expended by those individuals in the local economy. This increased spending would positively impact local restaurants, retail establishment, service businesses, and many other industries.

The direct inputs of the Energy Answers' project (e.g., number of jobs, wage levels and construction costs) were provided to Grant Thornton by Energy Answers. In turn, Grant Thornton incorporated these figures into the MIG software models to develop the multipliers utilized in this report. These multipliers provide Grant Thornton the measurement tools used to identify the indirect and induced employment positions, employment compensation and output created in the economies as a result of the direct jobs, compensation and construction of the Energy Answers' project.

Data files at the state, city and zip code levels were obtained from MIG. The data files were then manipulated to extract information regarding the estimated indirect and induced impacts at the various levels of government. The zip code data files obtained from MIG provide the lowest level of measurable data from which indirect and induced data can be extracted. To represent the nearby communities of Curtis Bay and Brooklyn, MIG combined data files for the zip codes 21225 and 21226. This combined data file was then utilized to obtain the estimates for the community level.

The indirect jobs and earnings are defined as the jobs and earnings generated by all local industries caused by the changes in direct final demand of the industries represented in our analysis. Induced jobs and earnings are defined as the response in jobs and earnings generated in all local industries caused by the expenditures of new household income resulting from the direct and indirect effects of final demand changes of the industries represented in our analysis. Final demand represents end users that buy goods and services for consumption. These goods and services disappear from the economy and are not used to generate more products.

Grant Thornton was also asked to provide an estimate of the fiscal (tax) impacts that the proposed project would have upon the same jurisdictions. Statutory exemptions, those programs that do not require formal application or negotiation such as the Maryland Manufacturing Equipment sales/use tax exemption, have been included when appropriate. It must be noted, however; that we have not reviewed asset details in order to make a determination as to the applicability the sales tax manufacturing exemption. This analysis assumes applicability. Further review must be completed in order to make a final determination as to the applicability of these programs and to the levels of investment that would be applicable.

This analysis does not take into account other potential discretionary incentives including other forms of real and tangible personal property tax abatements, income tax credits and/or sales/use tax rebates. The ultimate level of tax revenue generation could be impacted as a result of negotiated incentives provided by the jurisdictions. Further, this analysis does not take into account the net present value of the fiscal benefits. As a result of the significant impact that the real and tangible personal property tax incentives would

have on the property taxes being paid by the Company over the next ten years, we have not estimated the potential property taxes resulting from this project. An addendum will be issued at a later time once there is more clarity surrounding the potential property tax incentive programs and associated savings. Including estimates of the property taxes in this report, without accounting for the potential tax incentives, would most likely significantly overstate the fiscal impacts of this project.

Direct fiscal impacts as reported in this analysis were prepared by Grant Thornton to estimate the taxes that Energy Answers would pay the applicable jurisdictions in the course of their operations (e.g. sales and income taxes). Utilizing the direct effects as provided by Energy Answers and the MIG software, Grant Thornton was able to estimate the indirect and induced tax revenues generated in these economies as a result of the proposed Energy Answers' project.

These methodologies have enabled Grant Thornton LLP to estimate the economic and fiscal impacts that the proposed project will likely have upon the communities of Curtis Bay & Brooklyn, the City of Baltimore and the State of Maryland. Our estimates are based upon information compiled from the various private and public sector sources previously identified and reasonable expectations regarding the future, and may differ from actual results due to modifications in the data provided by the sources and unpredictable variables such as inflationary effects, changes in direct employment, direct earnings and tax generation estimates and the future industry mix in the relevant economies, as well as other factors.

The economic and fiscal impact analysis provides estimates of the combined facilities that make up the resource recovery project. In addition, we have highlighted the overall impacts of the renewable fuel power plant. The impacts reported for the stand alone power plant are included in the overall combined project estimates.

## IV. DETAILED ASSESSMENT OF ECONOMIC IMPACTS

This section provides a detailed analysis of what was summarized in Part I of this report. The economic impacts of the total industry output, the creation of 184 new jobs, and the creation of 406 construction period jobs are analyzed separately.

### A. Economic Impacts – Energy Answers' Resource Recovery Project (Combined Facilities)

#### 1. Total Industry Output

There will be an economic impact as a result of the total industry output generated by the project when fully operational. Total industry output is equivalent to total business sales plus what businesses place into inventory. It represents the value of production of goods and services by businesses in the local economy. It is also an overall measure of how a local economy is affected by the Energy Answers' project. Table 1 delineates the estimated total industry output generated by the project across all industries for a one year period of time. The figures for the City of Baltimore and community levels are inclusive of the State of Maryland. Likewise, the community level estimates are inclusive of the City of Baltimore figures. This will be true throughout the remaining charts detailed in this report.

Table 1

			Industry Output
State of Maryland			\$353,790,000
City of Baltimore			\$308,030,000
Community			\$278,942,000

#### 2. Annual Employment Impacts

The proposed renewable energy power plant is projected to directly create 184 industrial jobs when fully operational within the State of Maryland, with all of the new Energy Answers' positions occurring within the City of Baltimore. Direct annual payroll resulting from the new jobs, inclusive of benefits, is estimated to be \$15,542,000.

By applying the appropriate MIG employment multipliers as defined on page 8, to the 184 direct new jobs, we can estimate the indirect and induced employment impact. Table 2 delineates the results:

Table 2

	Direct Jobs	Multiplier	Indirect/Induced Jobs	Total Jobs
State of Maryland	184	4.255309	599	783
City of Baltimore	184	3.082250	383	567
Community	184	2.314041	242	426

We estimate that an additional 599 indirect and induced jobs would be generated in the State of Maryland. Total estimated new direct and indirect and induced jobs would be 783 within the State of Maryland after the creation of the 184 new jobs.

### 3. Annual Compensation Impacts

Utilizing the estimated 184 new direct jobs, the associated annual compensation of \$15,542,000 and the MIG data files we can estimate the compensation impacts to the economies. Annual compensation represents total payroll cost including wages and salaries plus benefits such as health insurance. Table 3 delineates the results.

Table 3

	Direct Compensation	Multiplier	Indirect/Induced Compensation	Total Compensation
State of Maryland	\$15,542,000	1.921377	\$14,320,000	\$29,862,000
City of Baltimore	\$15,542,000	1.490278	\$7,619,000	\$23,161,000
Community	\$15,542,000	1.293662	\$4,564,000	\$20,106,000

We estimate that an additional \$14,320,000 of indirect and induced compensation would be generated in the State of Maryland with \$7,619,000 and \$4,564,000 of these earnings occurring in the City of Baltimore and the communities of Brooklyn and Curtis Bay, respectively. Total estimated new direct, indirect and induced annual compensation would be \$29,862,000 within the State of Maryland after the creation of the 184 Energy Answers' jobs.

## B. Economic Impacts – Energy Answers Renewable Energy Power Plant

### 1. Total Industry Output

There will be an economic impact as a result of the total industry output generated by the power plant when fully operational. Total industry output is equivalent to total business sales plus what businesses place into inventory. It represents the value of production of goods and services by businesses in the local economy. It is also an overall measure of how a local economy is affected by the Energy Answers' expansion. Table 4 delineates the estimated total industry output generated by the power plant across all industries for a one year period of time.

Table 4

			Industry Output
State of Maryland			\$276,879,000
City of Baltimore			\$241,066,000
Community			\$218,302,000

## 2. Annual Employment Impacts

The proposed renewable energy power plant is projected to directly create 144 operating jobs when fully operational within the State of Maryland, with all of the new Energy Answer's positions occurring within the City of Baltimore. Direct annual payroll resulting from the new jobs, inclusive of benefits, is estimated to be \$12,510,000.

By applying the appropriate MIG employment multipliers against the 144 direct new power plant jobs, we can estimate the indirect and induced employment impact. Table 5 delineates the results.

Table 5

	Direct Jobs	Multiplier	Indirect/Induced Jobs	Total Jobs
State of Maryland	144	4.255309	469	613
City of Baltimore	144	3.082250	300	444
Community	144	2.314041	189	333

We estimate that an additional 469 indirect and induced jobs would be generated in the State of Maryland. Total estimated new direct, indirect and induced jobs would be 613 within the State of Maryland after the creation of the 144 new jobs.

## 3. Annual Compensation Impacts

Utilizing the estimated 144 new direct power plant jobs, the associated annual compensation of \$12,510,000 and the MIG data files we can estimate the compensation impacts to the economies. Annual compensation represents total payroll cost including wages and salaries plus benefits such as health insurance. Table 6 delineates the results.

Table 6

	Direct Compensation	Multiplier	Indirect/Induced Compensation	Total Compensation
State of Maryland	\$12,510,000	1.921377	\$11,526,000	\$24,036,000
City of Baltimore	\$12,510,000	1.490278	\$6,133,000	\$18,643,000
Community	\$12,510,000	1.293662	\$3,673,000	\$16,183,000

We estimate that an additional \$11,526,000 of indirect and induced compensation would be generated in the State of Maryland with \$6,133,000 and \$3,673,000 of these earnings occurring in the City of Baltimore and the communities of Brooklyn and Curtis Bay, respectively. Total estimated new direct, indirect and induced annual compensation would be \$24,036,000 within the State of Maryland after the creation of the 144 Energy Answers' jobs.

## C. Construction Period Portion of Economic Impact

### 1. Total Industry Output

There will be an economic impact as a result of the total industry output generated by the construction of the Energy Answers' project. Total industry output is equivalent to total business sales plus what businesses place into inventory. It represents the value of production of goods and services by businesses in the local economy. It is also an overall measure of how a local economy is affected by the construction of the Energy Answers' project. Table 7 delineates the estimated ~~total industry output generated by the construction of the project across all~~ industries for a one year period of time.

Table 7

			Industry Output
State of Maryland			\$86,093,000
City of Baltimore			\$80,314,000
Community			\$67,810,000

### 2. Annual Employment Impact – Construction Period

In addition to the above described economic impacts of the project's ongoing operations, the economic impact of the original construction investment of the project will also be substantial. The amount of investment in the project is approximately \$165,762,000 in real estate and leasehold improvement costs.

We estimated the total number of new construction employees and their associated compensation through the utilization of the MIG software. We divided the total State of Maryland Industry Output for the given industry classification, "construction non-residential manufacturing", by the total number of employees within the State of Maryland that fall within that same industry classification. This provided us with a reasonable average output per employee figure which was then divided into the estimated new building and leasehold improvement costs. The figure was then divided by the construction period of three years to provide us with the estimated average new employment levels that will be sustained over the three-year period.

Based upon the estimated \$165,762,000 in real property and leasehold improvement costs, it is estimated that 406 direct construction jobs would be created, and sustained each year during the construction period, within the State of Maryland. By applying the appropriate MIG construction period employment multipliers, we project the employment impacts as delineated in Table 8 below.



**Table 8**

	Direct Jobs	Multiplier	Indirect/Induced Jobs	Total Jobs
State of Maryland	406	1.577619	234	640
City of Baltimore	406	1.425971	173	579
Community	406	1.221307	90	496

We estimate that additional 234 indirect and induced jobs would be generated in the State of Maryland during the construction period with 173 and 90 of these jobs occurring in the City of Baltimore and the communities of Brooklyn and Curtis Bay, respectively. Total estimated new direct, indirect and induced construction period related jobs would be 640 within the State of Maryland. It should be noted that these annual employment impacts occur only during the term of estimated construction period, which is anticipated to be 3 years.

### **3. Annual Compensation Impacts – Construction Period**

The MIG software provided us with the average compensation per worker in the "construction non-residential manufacturing" industry classification. Utilizing this average we are able to estimate that the total direct, indirect and induced construction period related jobs would generate the following earnings during the construction period based on construction period earnings multipliers.

**Table 9**

	Direct Compensation	Multiplier	Indirect/Induced Compensation	Total Compensation
State of Maryland	\$18,811,000	1.522428	\$9,827,000	\$28,638,000
City of Baltimore	\$18,811,000	1.349687	\$6,578,000	\$25,389,000
Community	\$18,811,000	1.208701	\$3,926,000	\$22,737,000

Based on direct annual construction related payroll, we estimate that an additional \$9,827,000 of indirect and induced annual earnings would be generated in the State of Maryland during the construction period with \$6,578,000 and \$3,926,000 of these earnings occurring in the City of Baltimore and the communities of Brooklyn and Curtis Bay, respectively. Total estimated new direct, indirect and induced annual earnings would be \$28,638,000 within the State of Maryland during the construction period. It should be noted that these annual earnings impacts occur only during the term of the estimated construction period, which is anticipated to be 3 years.

## V. DETAILED ASSESSMENT OF FISCAL IMPACTS

This section provides a detailed analysis of what is summarized in Section II of this report. The fiscal impacts of the creation of 184 new full-time jobs and the creation of 406 construction period jobs have been analyzed separately.

### A. Energy Answers' Resource Recovery Project (Combined Facilities) – Annual Fiscal Impacts

The proposed project also would have significant fiscal impacts upon State of Maryland, City of Baltimore and communities of Brooklyn and Curtis Bay. We have estimated the new tax revenue that would be generated over a ten-year period. Utilizing the appropriate multipliers and calculating the "direct" impacts when measurable, we have estimated the likely fiscal impacts of the project from an indirect and induced perspective. The direct taxes below were estimated by Grant Thornton based upon the estimated project costs as provided by Energy Answers. The figures provided in the indirect and induced section were estimated by the MIG software. Further, the figures represented only provide estimates from a state and local perspective. Estimates of federal taxes and payments are not included. There will be an economic impact from the payments made to the federal government from a direct, indirect and induced perspective but analysis of these payments falls outside of the scope of this analysis.

#### 1. *Direct Taxes State and Local Taxes*

##### a. Direct Individual State Income Taxes

The direct individual state income tax was calculated by taking the estimated total taxable salaries, before benefits, of \$11,548,000, subtracting a single individual state exemption and multiplying the difference by the appropriate state tax rate. In addition we increased the total salaries by 3.5% per year. The total ten-year estimate for direct payroll tax was estimated to be \$6,045,000.

##### b. Direct Property Taxes

###### *Direct County Real Property Tax*

The direct county real property tax was not estimated at this time. We have assumed that the Energy Answers' project will qualify for several tax incentive programs, including the Maryland Enterprise Zone Real Property Exemption Program, which will most likely reduce the real property taxes significantly over the next ten years. Additionally, due to current economic conditions as related to the real estate market, lack of a final building design and pending incentive negotiation we feel that

estimating the property tax revenues based upon construction costs will significantly overstate the overall fiscal impacts to the community. An addendum will be issued that addresses the proposed fiscal impacts resulting from the new real property associated with this project at a later date when there is a clearer understanding of applicable incentive programs and resulting benefits.

#### *Direct County Personal Property Tax*

The direct county personal property tax was not estimated at this time. We have assumed that the Energy Answers' project will qualify for several tax incentive programs, including the Maryland Personal Property Manufacturing and Research and Development Tax Exemption Program, which will most likely reduce the tangible personal property taxes significantly over the next ten years. Additionally, due to the pending incentive negotiation we feel that estimating the tangible personal property taxes based upon the costs of the property will significantly overstate the overall fiscal impacts to the community. An addendum will be issued that estimates the fiscal impacts resulting from the new tangible personal property associated with this project at a later date when there is a clearer understanding of the applicable incentive programs resulting benefits.

**Table 10**

	Estimated 10-Year Impact
Direct Individual State Income Tax	\$6,045,000
Direct Real Property Tax	TBD
Direct Personal Property Tax	TBD
Total	\$6,045,000

## **2. Indirect & Induced Taxes and Payments**

### **a. Indirect Business Taxes and Payments**

The Indirect Business Tax represents a combination of indirect and induced business tax payments made to state and local authorities. These payments occur during normal operation of these businesses but do not include taxes on profit or income. These payments consist primarily of excise and sales taxes paid by individuals to businesses including: sales taxes; severance taxes; motor vehicle license taxes; business licenses; documentary and stamp taxes; indirect property taxes; and non-taxes such as rents, royalties and special assessments paid to state and local authorities. The MIG impact reports estimate that on an annual basis approximately \$31,691,800 will be paid to the state and local authorities as a result of the Energy Answers' project. The annual figure was then multiplied by ten to determine the ten-year impact of \$316,918,000.

**b. Corporate Profit Taxes and Payments**

The Corporate Profits Taxes represents a combination of direct, indirect and induced corporate profits taxes paid to state and local communities. In addition, dividends payments paid to state and local governments by businesses from investments are included. The MIG impact reports estimate that on an annual basis approximately \$4,240,000 will be paid to the state and local authorities as a result of the Energy Answers' project. The annual figure was then multiplied by ten to determine the ten-year impact of \$42,400,000.

**c. Personal Taxes and Payments**

The Personal Tax represents a combination of indirect and induced personal payments to state and local authorities. These payments include: household estate tax payments; personal motor vehicle fee payments, and personal non-tax payments such as fines and donations. The MIG impact reports estimate that on an annual basis approximately \$616,000 will be paid to the state and local authorities as a result of the Energy Answers' project. The annual figure was then multiplied by ten to determine the ten-year impact of \$6,160,000.

**d. Social Insurance Taxes and Payments**

The Social Insurance Tax represents a combination of employer and employee paid social insurance payments. These payments represent payments for retirement plans, workers compensation and temporary disability insurance. The MIG impact reports estimate that on an annual basis approximately \$64,200 will be paid to the state and local authorities as a result of the Energy Answers' project. The annual figure was then multiplied by ten to determine the ten-year impact of \$642,000.

**Table 11**

	Estimated 10-Year Impact
Indirect Business Tax and Payments	\$316,918,000
Indirect Corporate Profits Tax and Payments	\$42,400,000
Indirect Personal Tax and Payments	\$6,160,000
Indirect Social Insurance Tax and Payments	\$642,000
Total	\$366,120,000

## **B. Energy Answers Renewable Energy Power Plant – Annual Fiscal Impacts**

The proposed power plant also would have significant fiscal impacts upon State of Maryland, City of Baltimore and communities of Brooklyn and Curtis Bay. We have estimated the new tax revenue that would be generated over a ten-year period. Utilizing the appropriate multipliers and calculating the “direct” impacts when measurable, we have estimated the likely fiscal impacts of the power plant from an indirect and induced perspective. The direct taxes below were estimated by Grant Thornton based upon the estimated project costs as provided by Energy Answers. The figures provided in the indirect and induced section were estimated by the MIG software. Further, the figures represented only provide estimates from a state and local perspective. Estimates of federal taxes and payments are not included. There will be an economic impact from the payments made to the federal government from a direct, indirect and induced perspective but analysis of these payments falls outside of the scope of this analysis.

### ***1. Direct Taxes State and Local Taxes***

#### ***a. Direct Individual State Income Taxes***

The direct individual state income tax was calculated by taking the estimated total taxable salaries, before benefits, of \$9,325,000, subtracting a single state individual exemption and multiplying the difference by the appropriate state tax rate. In addition we increased the total salaries by 3.5% per year. The total ten-year estimate for direct payroll tax was estimated to be \$4,872,000.

#### ***b. Direct Property Taxes***

##### ***Direct County Real Property Tax***

The direct county real property tax was not estimated at this time. We have assumed that the Energy Answers’ project will qualify for several tax incentive programs, including the Maryland Enterprise Zone Real Property Exemption Program, which will most likely reduce the real property taxes significantly over the next ten years. Additionally, due to current economic conditions as related to the real estate market, lack of a final building design and pending incentive negotiation we feel that estimating the property tax revenues based upon construction costs will significantly overstate the overall fiscal impacts to the community. An addendum will be issued that addresses the proposed fiscal impacts resulting from the new real property associated with this project at a later date when there is a clearer understanding of applicable incentive programs and resulting benefits.

##### ***Direct County Personal Property Tax***

The direct county personal property tax was not estimated at this time. We have assumed that the Energy Answers' project will qualify for several tax incentive programs, including the Maryland Personal Property Manufacturing and Research and Development Tax Exemption Program, which will most likely reduce the tangible personal property taxes significantly over the next ten years. Additionally, due to the pending incentive negotiation we feel that estimating the tangible personal property taxes based upon the costs of the property will significantly overstate the overall fiscal impacts to the community. An addendum will be issued that estimates the fiscal impacts resulting from the new tangible personal property associated with this project at a later date when there is a clearer understanding of the applicable incentive programs resulting benefits.

**Table 12**

	Estimated 10-Year Impact
Direct Individual State Income Tax	\$4,872,000
Direct Real Property Tax	TBD
Direct Personal Property Tax	TBD
Total	\$60,689,000

## **2. Indirect & Induced Taxes and Payments**

### **a. Indirect Business Taxes and Payments**

The Indirect Business Tax represents a combination of indirect and induced business tax payments made to state and local authorities. These payments occur during normal operation of these businesses but do not include taxes on profit or income. These payments consist primarily of excise and sales taxes paid by individuals to businesses including: sales taxes; severance taxes; motor vehicle license taxes; business licenses; documentary and stamp taxes; indirect property taxes; and non-taxes such as rents, royalties and special assessments paid to state and local authorities. The MIG impact reports estimate that on an annual basis approximately \$24,802,000 will be paid to the state and local authorities as a result of the Energy Answers' power plant. The annual figure was then multiplied by ten to determine the ten-year impact of \$248,020,000.

### **b. Corporate Profit Taxes and Payments**

The Corporate Profits Taxes represents a combination of direct, indirect and induced corporate profits taxes paid to state and local communities. In addition, dividends payments paid to state and local governments by businesses from investments are included. The MIG impact reports estimate that on an annual basis approximately \$3,319,000 will be paid to the state and local authorities as a result of the Energy Answers' power

plant. The annual figure was then multiplied by ten to determine the ten-year impact of \$33,190,000.

c. Personal Taxes and Payments

The Personal Tax represents a combination of indirect and induced personal payments to state and local authorities. These payments include: household estate tax payments; personal motor vehicle fee payments, and personal non-tax payments such as fines and donations. The MIG impact reports estimate that on an annual basis approximately \$482,000 will be paid to the state and local authorities as a result of the Energy Answers' power plant. The annual figure was then multiplied by ten to determine the ten-year impact of \$4,820,000.

d. Social Insurance Taxes and Payments

The Social Insurance Tax represents a combination of employer and employee paid social insurance payments. These payments represent payments for retirement plans, workers compensation and temporary disability insurance. The MIG impact reports estimate that on an annual basis approximately \$50,300 will be paid to the state and local authorities as a result of the Energy Answers power plant. The annual figure was then multiplied by ten to determine the ten-year impact of \$503,000.

Table 13

	Estimated 10-Year Impact
Indirect Business Tax and Payments	\$248,020,000
Indirect Corporate Profits Tax and Payments	\$33,190,000
Indirect Personal Tax and Payments	\$4,820,000
Indirect Social Insurance Tax and Payments	\$503,000
Total	\$286,533,000

C. Construction Period – Annual Fiscal Impacts

1. *Direct Taxes State and Local Taxes*

a. Direct State Sales/Use Taxes

The direct State of Maryland sale/use tax liability utilized several high level assumptions applied to direct project costs as estimated by Energy Answers. We assumed that of the total building and leasehold improvement costs approximately 50% of these costs would be associated with materials with the other 50% being associated with labor. The building materials would be subject to sales/use taxes. Additionally, we

assumed that approximately 75% of the machinery and equipment would be exempt from the sales/use tax because of the Maryland Manufacturing Exemption. We also assumed that 100% of the "Other" classification of assets would be taxable from a sales/use tax perspective. Utilizing these assumptions we estimate that the project will result in approximately \$24,129,000 in State of Maryland sales/use taxes during the three-year construction period.

**b. Direct Individual State Income Taxes**

The direct individual state income tax was calculated by taking the estimated total taxable salaries, before benefits, of \$18,811,000, subtracting a single individual state exemption and multiplying the difference by the appropriate state tax rate. The estimated taxable salaries were determined by utilizing the average compensation figure for employees within this industry sector as listed in the MIG impact report. Total salaries were not increased by 3.5% per year. The total three-year direct payroll tax was estimated to be \$2,520,000. This tax is only paid during the three-year construction period.

**Table 14**

	Estimated 3-Year Impact
Direct Sales/Use Taxes	\$24,129,000
Direct Individual State Income Taxes	\$2,520,000
Total	\$26,649,000

**2. *Indirect & Induced Taxes and Payments***

**a. Indirect Business Taxes and Payments**

The Indirect Business Tax represents a combination of indirect and induced business tax payments made to state and local authorities. These payments occur during normal operation of these businesses but do not include taxes on profit or income. These payments consist primarily of excise and sales taxes paid by individuals to businesses including: sales taxes; severance taxes; motor vehicle license taxes; business licenses; documentary and stamp taxes; indirect property taxes; and non-taxes such as rents, royalties and special assessments paid to state and local authorities. The MIG impact reports estimate that on an annual basis approximately \$1,641,000 will be paid to the state and local authorities annually during the three-year construction period. The annual figure was then multiplied by three to determine the three-year impact of \$4,923,000.



**b. Corporate Profit Taxes and Payments**

The Corporate Profits Taxes represents a combination of direct, indirect and induced corporate profits taxes paid to state and local communities. In addition, dividends payments paid to state and local governments by businesses from investments are included. The MIG impact reports estimate that on an annual basis approximately \$426,000 will be paid to the state and local authorities during the construction period. The annual figure was then multiplied by three to determine the three-year impact of \$1,278,000.

**c. Personal Taxes and Payments**

The Personal Tax represents a combination of indirect and induced personal payments to state and local authorities. These payments include: household estate tax payments; personal motor vehicle fee payments, and personal nontax payments such as fines and donations. The MIG impact reports estimate that on an annual basis approximately \$246,000 will be paid to the state and local authorities during the three-year construction period. The annual figure was then multiplied by three to determine the three-year impact of \$738,000.

**d. Social Insurance Taxes and Payments**

The Social Insurance Tax represents a combination of employer and employee paid social insurance payments. These payments represent payments for retirement plans, workers compensation and temporary disability insurance. The MIG impact reports estimate that on an annual basis approximately \$37,000 will be paid to the state and local authorities during the construction period. The annual figure was then multiplied by three to determine the three-year impact of \$111,000.

**Table 15**

	Estimated 3-Year Impact
Indirect Business Tax and Payments	\$4,923,000
Indirect Corporate Profits Tax and Payments	\$1,278,000
Indirect Personal Tax and Payments	\$738,000
Indirect Social Insurance Tax and Payments	\$111,000
Total	\$7,050,000



Grant Thornton

April 30, 2009

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The above exhibits demonstrate the substantial economic and fiscal impacts that the proposed Energy Answers' resource recovery project would have upon the regional and state economies.

We have determined that the implementation of the proposed project would have a very significant impact on the economies of the State of Maryland, City of Baltimore and the immediate neighborhoods of Curtis Bay and Brooklyn.

Our analysis called upon professionals from Grant Thornton LLP and utilized established methodologies. The results of the analysis are based upon information compiled from various private and public sector sources. All information provided to us for purposes of this report was not audited and was assumed to be accurate. The estimates calculated herein may differ from actual economic and fiscal outcomes resulting from the proposed project due to inaccuracies of data provided by the various data sources and other variables, including fluctuations in the local and state economies, changes in tax rates, and methods of assessment and variable inflation rates and actual increases in cost-of-living as well as other factors.

This analysis has been conducted solely for the use of Energy Answers' and is not intended for use by any other party. As such, we are not responsible for the use of the analysis beyond its intended use, or for the use of the analysis by other parties. We are not responsible for amendments to this assessment due to changes in information or variables occurring after the date of this report.

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Inquiries regarding this assessment should be directed to Steve Carter at (216) 858-3676.

Very truly yours,

*Grant Thornton LLP*

BY THE COUNCIL

This Bill, having been approved by the Executive and returned to the Council, stands enacted on \_\_\_\_\_, 2011.

Stephen M. LeGendre  
Stephen M. LeGendre, Administrator to the County Council

BY THE COUNCIL

This Bill, having been passed by the yeas and nays of two-thirds of the members of the Council notwithstanding the objections of the Executive, stands enacted on \_\_\_\_\_, 2011.

Stephen M. LeGendre  
Stephen M. LeGendre, Administrator to the County Council

BY THE COUNCIL

This Bill, having received neither the approval nor the disapproval of the Executive within ten days of its presentation, stands enacted on \_\_\_\_\_, 2011.

Stephen M. LeGendre  
Stephen M. LeGendre, Administrator to the County Council

BY THE COUNCIL

This Bill, not having been considered on final reading within the time required by Charter, stands failed for want of consideration on \_\_\_\_\_, 2011.

Stephen M. LeGendre  
Stephen M. LeGendre, Administrator to the County Council

BY THE COUNCIL

This Bill, having been disapproved by the Executive and having failed on passage upon consideration by the Council stands failed on \_\_\_\_\_, 2011.

Stephen M. LeGendre  
Stephen M. LeGendre, Administrator to the County Council

BY THE COUNCIL

This Bill, the withdrawal of which received a vote of two-thirds (2/3) of the members of the Council, is withdrawn from further consideration on \_\_\_\_\_, 2011.

Stephen M. LeGendre  
Stephen M. LeGendre, Administrator to the County Council